Research Management Corp. *and* Service Employees International Union, Local 36, AFL–CIO. Cases 4–CA–18559, 4–CA–18598, 4–CA–18728, and 4–CA–18905

April 22, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On September 27, 1990, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, the Charging Party filed a reply brief, and the General Counsel filed a reply brief, cross-exceptions, and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] as modified and to adopt the recommended Order as modified.[3]

The General Counsel excepted to the judge's failure to find that Project Manager Joe Brown unlawfully interrogated employee Larry Hightower about his own union activities and those of other employees. The judge dismissed this allegation because he found the interrogation ''fairly passive and coupled with no hint of threat.'' We reverse the judge and find that under all the circumstances the interrogation violated the Act. *Rossmore House*, 269 NLRB 1176 (1984).

Over a period of several weeks, Brown, a relatively high-level supervisor, questioned Hightower about the mood of the employees with respect to the Union, whether union literature was being passed around, and whether Hightower was active or planned to become active in the Union. Hightower was not an open union supporter. The interrogations occurred at a time when the Respondent admittedly sought to learn everything it could about the union activity and openly opposed unionization. Further, Brown's interrogations about employees' union activity contained no assurances that there would be no retaliation for supporting the Union. Therefore, we find the interrogation of Hightower as to his union activities and those of other employees was unlawful. See *Philips Industries*, 295 NLRB 717 (1989). We shall modify the Conclusions of Law and recommended Order accordingly.

AMENDED CONCLUSIONS OF LAW

Substitute the following for the judge's Conclusions of Law 7(a).

''(a) Assistant Project Manager Joseph Brown telling employees to stop speaking to other employees about the Union, urging employees to resign because of activities in support of the Union, and interrogating employees about their own union sympathies and activities and those of other employees.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Research Management Corp., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(e).

''(e) Interrogating an employee about the employee's union sympathies and activities or the sympathies and activities of other employees.''

2. Substitute the following for paragraph 2(b).

''(b) Offer Ernestine Sherrill-Harrell immediate and full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, discharging if necessary any employee hired to replace her; and make Sherrill-Harrell whole for any loss of earnings or other benefits she may have suffered as a result of the discrimination against her, in the manner set forth in the remedy section of the judge's decision.''

3. Substitute the attached notice for that of the administrative law judge.

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[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel also excepted to the judge's failure to find the following actions violated Sec. 8(a)(1): Supervisor Keith Saunders' interrogating employee Dan Stephens about his union activities and threatening him; Supervisor Shelton Hargrove's threatening employees with layoff; Assistant Project Manager Donald Singleton's threatening employees with job loss; Assistant Project Manager Carl Shelman's interrogating employee Michael Winters about his union activity; and Supervisor Clarence Johnson's interrogating employee Darryl Shaw about his union activity. We find it unnecessary to address these exceptions because the additional findings the General Counsel seeks would be cumulative and therefore would not affect the remedy or Order.

[2] We agree with the judge's finding that Ernestine Sherrill-Harrell's remarks to Assistant Project Manager Brown were not so egregious as to render her remarks unprotected. Therefore, assuming arguendo that the discharge of Sherrill-Harrell was based on her remarks, we find that the discharge was nevertheless unlawful as those remarks did not cause Sherrill-Harrell to lose the protection of the Act. *Postal Service*, 250 NLRB 4 fn. 1 (1980).

In adopting the judge's alternative conclusion that the Respondent is bound by the results of the card check because it led the Union to believe that the purpose of the card check was for recognition, we find it unnecessary to rely on the judge's finding that the Respondent acted in bad faith.

Contrary to the Respondent's contention, we do not find that the judge imposed a bargaining order under *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969). See the judge's Conclusions of Law 4 and 5 infra, *Without Reservation*, 280 NLRB 1408, 1417–1418 (1986). In any event, we find it unnecessary to rely on the judge's discussion of *Gissel*.

[3] We note that the judge omitted certain standard remedial language from his reinstatement order. We shall modify the recommended Order accordingly.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain collectively in good faith with Service Employees International Union, Local 36, AFL–CIO, as the exclusive collective-bargaining representative of our employees in the following unit:

> Included: All non-supervisory, non-clerical employees employed by Research Management Corp. at the Philadelphia Naval Shipyard.
>
> Excluded: All guards and supervisors as defined in the Act.

WE WILL NOT discharge our employees because they engage in conduct protected by Section 7 of the Act.

WE WILL NOT tell our employees to stop speaking to other employees about the Union and WE WILL NOT urge our employees to resign because of their activities in support of the Union.

WE WILL NOT tell our employees that we will never sign a contract with the Union and WE WILL NOT threaten our employees with the loss of their jobs if they continue to seek union representation.

WE WILL NOT interrogate our employees about their union sympathies and activities or the union sympathies and activities of other employees.

WE WILL NOT threaten our employees with loss of transportation, discipline, loss of jobs, discharge, or layoff because of their union activity.

WE WILL NOT inform our employees that we will not allow union stewards to attend employee disciplinary meetings and WE WILL NOT threaten to discharge union stewards who attempt to attend employee disciplinary meetings.

WE WILL NOT threaten to impose more onerous working conditions on our employees if they select the Union as their collective-bargaining agent.

WE WILL NOT threaten our employees with unspecified reprisals if they engage in union activity.

WE WILL NOT state to our new employees that it is futile to support the Union because of our contract with the Navy.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL, on request, extend recognition to Service Employees International Union, Local 36, AFL–CIO as the exclusive collective-bargaining representative of our employees in the unit set out above and WE WILL bargain in good faith with the Union with respect to wages, hours of work, and any other terms and conditions of employment.

WE WILL offer Ernestine Sherrill-Harrell immediate and full reinstatement to her former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, discharging, if necessary, any employee hired to replace her; and WE WILL make Ernestine Sherrill-Harrell whole, including interest, for any loss of earnings or any other benefits she may have suffered as a result of her discharge.

WE WILL remove from our files any reference to the discharge of Ernestine Sherrill-Harrell and notify her in writing that this has been done and that this matter will not be used against her in any way.

RESEARCH MANAGEMENT CORP.

Henry R. Protas, Esq. and *Peter C. Verrochi, Esq.*, for the General Counsel.

Thomas J. Bender Jr., Esq. and *Edward S. Mazurek, Esq.*, of Philadelphia, Pennsylvania, for the Respondent.

Dennis P. Walsh, Esq. and *Margaret Browning, Esq.*, of Philadelphia, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. Service Employees International Union, Local 36, AFL–CIO (the Union or the Charging Party) filed charges against Research Management Corp. (RMC or Respondent) on January 11 and 26, March 14, and May 15, 1990, in the above-captioned cases. The Regional Director for Region 4 issued complaints in each case and on July 26, 1990, issued an order which consolidated all the captioned cases for hearing. The consolidated complaint alleges that Respondent engaged in and is engaging in activity which violates Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). Respondent denies these allegations.

Pursuant to a petition filed by the Regional Director for Region 4, the United States District Court on July 26, 1990, issued an injunction under Section 10(j) of the Act requiring Respondent to recognize the Charging Party and to begin bargaining in good faith with it. The court also directed that this proceeding be handled with the utmost expedition. Hearing was held on these cases before me in Philadelphia, Pennsylvania, on August 6–9, 1990. Briefs were received from

the parties on or about September 10, 1990. Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a Virginia corporation, with headquarters in Virginia Beach, Virginia, and as pertinent is engaged in the provision of contract services to the United States Government, including the United States Department of the Navy at the Philadelphia Naval Shipyard in Philadelphia, Pennsylvania. The jurisdictional allegations of the consolidated complaint were admitted and I find that Respondent is now, and has been at all times material to this proceeding, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE INVOLVED LABOR ORGANIZATION

It was admitted and I find that the Union is now and has been at all times material to this proceeding, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues Presented for Determination*

The consolidated complaint alleges that Respondent has violated Section 8(a)(1), (3), and (5) of the Act by a number of actions. These alleged violations fall into several general categories and will be discussed and decided within these categories. Therefore, the issues for determination are as follows:

1. Did Respondent, on and after January 4, 1990,[1] unlawfully refuse to recognize the Union as the exclusive collective-bargaining representative of its employees in an appropriate unit in violation of Section 8(a)(1) and (5) of the Act?[2]

2. Did Respondent, on January 24, 1990, discharge its employee Ernestine Sherrill-Harrell in violation of Section 8(a)(1) and (3) of the Act because of her activities in support of the Union?

3. Did Respondent, on January 23, 1990, tell an employee to stop talking to other employees about the Union and tell an employee to resign if the employee did not like working for the Respondent in order to discourage union activity in violation of Section 8(a)(1) of the Act?

4. Did Respondent, acting through its Assistant Project Manager Jerome Simmons, violate Section 8(a)(1) of the Act by in or about January or February 1990, threatening employees with the loss of their jobs if the employees continued to support the Union?

5. Did Respondent, acting through its Supervisor John Finklea, engage in conduct in violation of Section 8(a)(1) of the Act, by threatening employees with layoff or termination if the employees continued to engage in union activity?

6. Did Respondent, acting through its Supervisor Keith Saunders, engage in conduct in violation of Section 8(a)(1) of the Act by:

(a) In or about mid-March 1990, interrogating an employee concerning the employee's union sympathies and threatening an employee with unspecified reprisals if the employee engaged in union activity?

(b) On or about April 12, 1990, threatening to discharge employees because of their activities on behalf of the Union?

(c) On or about April 16, 1990, threatening to terminate employees who were active on behalf of, or supported, the Union?

7. Did Respondent, acting through its Supervisor Shelton Hargrove, engage in conduct in violation of Section 8(a)(1) of the Act, by:

(a) In or about mid-March 1990, threatening to lay off employees because of the employees' union activities?

(b) In or about mid-March 1990, threatening employees with the loss of their jobs because of their union activities?

8. Did Respondent, acting through its Assistant Project Manager Donald Singleton, violate Section 8(a)(1) of the Act by:

(a) On or about December 22, 1989, threatening an employee with discipline because the employee had engaged in union activities?

(b) In or about January 1990, refusing to provide transportation to an employee because the employee had engaged in union activity?

(c) In or about January 1990, threatening employees with loss of their jobs if they continued to support the Union?

(d) On or about February 10, 1990, threatening an employee with discharge because the employee had engaged in union activity?

(e) In or around February 1990, informing an employee that the Respondent would not permit employees to use the Respondent's van because of the union activities of its employees, and threatening the employee with unspecified reprisals because the employee had engaged in union activity?

(f) In or about the latter part of February 1990, threatening employees with termination if the employees continued to engage in union activity?

(g) In or about February or March 1990, threatening employees with termination if the employees continued to engage in union activity?

(h) On or about March 15, 1990, threatening an employee with physical harm because the employee had engaged in union activity?

(i) In or about March 1990, interrogating an employee concerning the employee's union activity, and telling the employee that the Respondent would lay off employees if its employees continued to engage in union activity?

(j) In or about March 1990, interrogating an employee concerning the employee's union activities and sympathies?

(k) In or around February 1990, threatening to terminate employees because they were union stewards?

(l) In or around February 1990, threatening to discipline employees because they were union stewards?

9. Did Respondent engage in conduct in violation of Section 8(a)(1) of the Act by since about March 1990, prohibiting employees from wearing union symbols on their hardhats?

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[1] The facts establish December 7, 1989, to be the actual date in question.

[2] The following employees of the Respondent constitute a unit appropriate for the purpose of collective bargaining within the meaning of Sec. 9(b) of the Act:

Included: All non-supervisory, non-clerical employees employed by the Respondent at the Philadelphia Naval Shipyard.

Excluded: All guards and supervisors as defined in the Act.

10. Did Respondent, acting through its Supervisor Carl Shelman, engage in conduct in violation of Section 8(a)(1) of the Act, by:

(a) In or about February 1990, threatening employees with termination if they supported the Union?

(b) In or about mid-March 1990, interrogating an employee concerning the employee's union sympathies?

11. Did Respondent, acting through its Supervisor Christopher Brunson, engage in conduct in violation of Section 8(a)(1) of the Act by:

(a) In or about January 1990, informing employees that the Respondent would not allow union stewards to attend employee disciplinary meetings, and threatening to discharge union stewards who attempted to attend employee disciplinary meetings?

(b) In or about February 1990, threatening to terminate employees if the employees continued to engage in union activity?

(c) In or about March 1990, telling employees that the Respondent was going to lay off employees because of their union activities?

12. Did Respondent, acting through its support group manager, Richard Garcia, engage in conduct in violation of Section 8(a)(1) of the Act by on or about March 5, 1990, telling employees that Respondent would never sign a contract with the Union, and further, threatening employees with the loss of their jobs if the employees continued to seek union representation?

13. Did Respondent, acting through its Supervisor Spencer Gibbs, engage in conduct in violation of Section 8(a)(1) of the Act, in or about January 1990, by threatening to impose more onerous working conditions on employees if the employees selected the Union as their collective-bargaining representative?

14. Did Respondent, acting through its Assistant Project Managers Louis Harvey and Donald Singleton, violate Section 8(a)(1) of the Act by interrogating an employee on March 5, 1990, concerning the employee's union sympathies and activities?

15. Did Respondent, acting through its Supervisor William McDuffie, engage in conduct in violation of Section 8(a)(1) of the Act, by:

(a) In or about November 1989, threatening to discharge an employee because of the employee's union activity?

(b) In or about January 1990, threatening employees with loss of their jobs if they continued to engage in uion activities?

16. Did Respondent, acting through its Assistant Project Manager Joseph Brown, engage in conduct in violation of Section 8(a)(1) of the Act by:

(a) From October to mid-November 1989, on numerous occasions interrogate an employee concerning the union sympathies and activities of the Respondent's employees?

(b) In or about mid-November 1989, interrogate an employee concerning the employee's union sympathies?

(c) In or about early November 1989, threaten an employee with discharge because the employee supported the Union?[3]

(d) On or about February 5, 1990, instruct an employee to refrain from wearing union buttons and from soliciting for the Union during nonworking time, interrogate an employee concerning the employee's union activities, threaten increased scrutiny of an employee's conduct because the employee supported the Union, and threaten an employee with discharge because the employee supported the Union?

17. Did Respondent, acting through its Supervisor Thomas Scott, engage in conduct in violation of Section 8(a)(1) of the Act, by in or about mid-February 1990, threatening an employee with unspecified reprisals in order to discourage the employee from engaging in union activity?

18. Did Respondent, acting through its Supervisor Clarence Johnson, engage in conduct in violation of Section 8(a)(1) of the Act, by in or around February 1990, interrogating an employee concerning the employee's union activities and sympathies?

B. *Background Facts and Determination of the Alleged Unlawful Refusal to Recognize and Bargain with the Union*[4]

Research Management Corp. was begun about 6 years ago by its owner and chief executive officer, Joseph Garcia. The Company provides a variety of contract services to the United States Government ranging from services here involved to high technology consultation and application. Most, if not all, of its contracts are minority set aside contracts obtained by bidding under Small Business Administration procedures. The contract which gives rise to this case is with the U.S. Department of the Navy and involves providing firewatch services for repair work being performed on the USS *Kitty Hawk* at the Philadelphia Naval Shipyard.[5]

The current contract for the provision of firewatch services differs from a previous contract held by RMC for similar work on another ship in that it is a Walsh Healy Act contract rather than a Service Contract Act contract. Very simply, this difference allowed the Navy to pay wages negotiated by the Navy, and not the prevailing wage scale for the involved work as determined by the Department of Labor. The wages negotiated by the Navy were substantially less on the USS *Kitty Hawk* project than they had been on the previous project. Therefore, RMC's involved firewatch employees were required to take a cut in pay to work on the USS *Kitty Hawk*. There has been an ongoing effort by RMC to have the current contract converted to a Service Contract Act contract, which would have the effect of retroactively requiring the Navy to pay the higher wages mandated by the Department of Labor. This would result in substantial backpay payments to RMC's current and former employees and allow for the payment of higher wages for continuing work under the contract. As of the date of hearing, RMC's efforts in this regard seemed to be successful, though the conversion was subject to some further appeal by the Navy.

[3] The General Counsel requested that the allegations set forth in subpars. (c) and (d) be withdrawn. The request is granted.

[4] Each of the issues raised by the allegations of the consolidated complaint will be discussed hereinafter in the order in which they are set forth at pp. 2 through 6 of this decision. Evidence and findings related to each such issue will be identified by reference to the issue to which it is related in a uniform abbreviated manner. For example, the issue discussed under subheading ''B'' above is consolidated complaint allegation no. 1 (CCA 1).

[5] Firewatch services involve providing employees to put out fires which start from welding and other similar repair work being done on the USS *Kitty Hawk*. The employees providing this service are called firewatchers.

1. The organizing campaign and RMC's initial response

The Union's organizing effort among Respondent's employees at the Philadelphia Navy Shipyard was led by the Union's organizer, Lenore Friedlander. Friedlander's first contact with Respondent's employees came when she was called by an employee seeking information about starting a union. This call resulted in a meeting held on October 21, 1989[6] attended by Friedlander and five of Respondent's employees, Laverne Williams, Ernestine Sherrill-Harrell, Larry Little, Ricardo Jackson, and Wardell McMoore. The group decided to begin an union organizing campaign and on the following Monday, October 23, started passing out union authorization cards at a location at the shipyard where many of RMC's employees pass daily. The effort to obtain employee signatures was successful and a substantial number of signed cards were obtained in a short timeframe.

The Respondent learned of the union campaign at its inception and Joe Garcia contacted Stephen Mims, an attorney used on a regular basis by the Company for a variety of legal tasks. Mims testified that this contact occurred in mid to late November. One of Mims' tasks with regard to the union campaign was to prepare a document dated December 4[7] and called ''Research Management Corporation Policy Statement Regarding Union Solicitation and Distribution Activities.'' After setting forth some rules for employees to follow with respect to solicitation and distribution, the document states:

> Research Management Corporation opposes unionization of its employees. RMC believes that unionization is not in the best interests of its employees and discourages cooperation by its employees with the efforts of others to organize and promote unionization.

The document was signed by Joe Garcia and it was distributed to all employees.

On unspecified dates, but before December 7, Joe Garcia met with the supervisory staff in Philadelphia and learned that wages and benefits were the concerns of the employees. He told the supervisors to explain to the employees that the wages were set by the Navy and he could do nothing about it. He also made clear that he was opposed to the Union.

2. The Unions initial demand for recognition on December 1 and RMC's response

On December 1, Friedlander first approached Respondent seeking recognition. The Union's normal practice in seeking recognition is to obtain authorization cards from a majority of an employers' employees and have a card check with the employer to verify majority status and obtain voluntary recognition. On December 1, Friedlander called RMC's headquarters in Virginia Beach, Virginia, and spoke with William Broms, Respondent's director of administration.

Friedlander told Broms her name and position and explained that she was involved in an organizing campaign among RMC's employees at the Philadelphia Naval Shipyard. She stated that a majority of Respondent's employees had signed authorization cards and requested recognition, explaining that the Union usually picks an agreeable neutral third party to conduct a card check, supplies the signed authorization cards which are checked against company supplied payroll records, and if a majority of employees have signed authorization cards, the company recognizes the Union and bargains over a contract. Broms was noncommittal, stating he had never dealt with this situation before.

Broms immediately reported the call to Joe Garcia, who called in his son and RMC's support group manager Richard Garcia and informed him. Joe Garcia testified that they decided to wait until a written demand for recognition came in to take action. However, he did instruct Broms to call Stephen Mims, an attorney regularly used by Respondent for a wide variety of legal tasks and for advice. Mims testified that on December 1, Broms called at the request of Joe Garcia. Broms instructed Mims to call Friedlander with the purpose of establishing a dialogue with the Union and establishing Mims as the point of contact for the Respondent.

Friedlander followed up her telephone conversation with Broms with a letter dated December 1, which reiterated what she had said in the conversation. Enclosed with the letter was a standard recognition form used by the Union to secure employer recognition. This material was sent by express mail. Later in the day of December 1, Friedlander received a call from Mims, who identified himself as RMC's general counsel. Friedlander explained to Mims that the Union had signed cards from a majority of RMC's employees and the normal procedure for a card check. She told Mims that the Union normally goes through a card check for recognition, using a neutral third party to conduct the check. If the Union has a majority, then the Company recognizes the Union and begins bargaining. She also said that the Union normally uses Jim Martin, executive director of PALM to conduct the card check.[8]

Friedlander testified that Mims stated that Respondent would be open to conducting a card check, and in this conversation or another one with Mims, he said, ''There's no reason to go to the Board.'' He also said that the earliest he could be available for a card check would be the Wednesday of the following week.

As pertinent, Mims testified that Friedlander told him that the Union had signed authorization cards from about 90 percent of RMC's Philadelphia employees. Mims expressed surprise at this figure because of the high employee turnover at the shipyard. Friedlander requested recognition based on the cards and Mims told her he had not had any discussions with RMC relative to whether they were willing to recognize based on the cards. He then explained what RMC did and that only Joe Garcia could make that decision. Mims told her that he would like to see the card so he could resolve some preliminary issues with regard to the composition of the bargaining unit. He testified that Friedlander said she would be happy to let him see the cards, but she wanted to do it in the presence of a third party. Mims had been involved with a card count while employed by the Federal Election Commission. The card check there was to determine the level of support to justify an election and to resolve issues of eligibility of employees to be in the unit. Friedlander told Mims

[6] All dates in this section of this decision are in 1989 unless otherwise noted.

[7] The document was prepared prior to this date and was faxed to Respondent on December 1.

[8] PALM is the acronym for Philadelphia Area Labor Management Committee.

she would send him a standard union recognition agreement and he said he would be happy to look at it.

Friedlander also followed up this conversation with an express mail letter dated December 1. The pertinent contents of this letter are as follows:

> Enclosed are copies of the recognition letter sent to RMC for its employees at the Philadelphia Navy Yard and our standard recognition agreement.
>
> We are very pleased that you and/or RMC will be available and willing to conduct a card check for recognition next week. As I mentioned on the phone, we are interested in moving through this process in as expeditious a manner as possible.
>
> I am hopeful we can develop a good working relationship and look forward to hearing from you on Monday regarding the scheduling of the card check.
>
> Please feel free to contact me for any additional information or if you have any questions at [phone number].

Enclosed with this letter was a copy of the Union's standard recognition form.

3. The dialogue between the Union and RMC on December 4 relating to the authorization card check

Joe Garcia testified that on December 4, he received the letter Friedlander had mailed to Broms on December 1. He analyzed the request for recognition and decided it would not be in the best interests of RMC to grant recognition. He further testified that he decided to go to a card check to ''give her [Ms. Friedlander] the benefit of the doubt.'' He then had Mims call Friedlander to set up a meeting to check the cards. Joe Garcia testified about the purpose of RMC attending the card check thusly:

> I had authorized it [him] to go down and check the cards. I thought there was no danger to check the cards, but most important I told Rick [Richard Garcia] to tell Mims and himself to go down there and find out beyond having signatures on the cards [to] find out about the concerns of the employees, check with them because I understood from what Rick had told me that they were going to have some employees there to represent the union. I said sit down with them, find out what because we have never—we have run this company—we have run the company on the assumption that people are business. Our employees are important to us.

On cross-examination Joe Garcia added that he also expected to find out the number of signed cards held by the Union and whether the people signing were on the current payroll list given the fact that the Company has a high turnover rate among its employees. He told Richard Garcia before he attended the card check,

> No recognition. Go down there and check the cards and be sure you don't recognize these people. You don't sign anything, make clear to Mims that we are not recognizing these people. As far as I am concerned I am still going on the basis that we were opposed to the union for many, many reasons.[9]

Mims testified that on December 4, he received both the December 1 letters from Friedlander to him and to Broms. He got in touch with RMC personnel and told them of his earlier conversation with Friedlander. He recommended that Respondent take the opportunity to go and take a look at the cards for the purpose of causing the support of the employees. He felt it was important in gathering information for Joe Garcia so that he could make a decision on what step he was going to take next. He also relayed his concern about the representations of the Union as to the number of cards it possessed in light of the employee turnover. Richard Garcia agreed that this was a problem and that it was something that could be resolved by a card check. He also told Richard Garcia that he had looked at the proposed recognition agreement and that he did not have a problem with the way it was worded, but that it did not matter if nobody had made a decision to recognize. Richard Garcia responded he agreed, indicating that Joe Garcia would first have to make a decision to recognize and if he wanted the language changed, then he could change the language.

Mims testified that he received a telephone call from Friedlander on December 4 wherein she asked him if he had received her letter and whether a decision had been made on whether the Respondent would recognize the Union based on the results of a card check. Mims replied that he had not talked with Respondent about this and he would get back in touch with her.

He had a second conversation with Friedlander later in the day. In this conversation, Mims remembered raising again the issue of the composition of the bargaining unit and the matter of employee turnover. Friedlander asked whether he had read the recognition agreement and whether he had any suggested changes to make, as it was a draft and she was open to reasonable changes. Mims replied that it looked reasonable to him, but that it was premature as Joe Garcia had not made a decision on whether to recognize. Friedlander asked when the decision would be made and Mims replied that he did not know, but that he would be making recommendations to Joe Garcia.

Mims testified that he told her that part of his mission was to try to discover what were the concerns of the employees, and Friedlander replied the principle concerns were health and safety. He also informed her that the contract between RMC and the Navy was not a Service Contract Act contract and he was concerned about the effect of this if the Company recognized the Union. They discussed the mechanics of the card check, with Friedlander suggesting that a neutral third party be selected and suggested PALM. He said that sounded reasonable and would make his recommendation to RMC and get back with her.

Mims testified that she asked if two employees could attend the card check and he said he would have to check with

[9] Joe Garcia did not attend the card check himself as he was required to be in Arizona between December 5 and 11 on personal family business. At this point it should be noted that other than the number of signed authorization cards held by the Union, none of the other information Joe Garcia claims he wanted from the card check was reported back to him following the card check. Moreover, aside from the number of cards held by the Union, all other information was obtainable just as easily from other sources, including a meeting with the Union.

RMC. He then called Richard Garcia, discussed the matter, and was instructed to tell Friedlander to call Frank Castagna to work out the details.

In a third conversation with Friedlander on December 4, Mims stated he gave her this information. In one of these conversations, Mims told Friedlander that he did not see any reason to go to the Board, in ''the context of what appeared to be a working relationship between the union and RMC to resolve what might be potential conflicts or potential problems with the scope of the bargaining unit.'' He stated that at no time in these discussions were either dates for negotiations or the concept of negotiations discussed. He testified that at no time during the conversations did they discuss the recognition agreement in the context of the card check.

With respect to these Monday, December 4, telephone conversations, Friedlander testified that Mims stated that a card check was agreeable to Respondent and that PALM was agreeable as the neutral party. Mims also said he would be available either December 7 or 8, after 10:30 a.m. Mims acknowledged receipt of her letter of December 1 and the enclosed recognition form. He said the recognition form would be fine if the Union had a majority of signed cards. He did not think there would be a problem. They agreed to certain mechanics of the card check. Mims raised a question about membership cards the Union had obtained versus authorization cards. Friedlander testified that the Union had run out of authorization cards and had substituted a few membership cards for them. She testified that the Union had obtained about 350 signed cards, of which about 19 were membership cards. They did not reach a resolution at this time regarding whether the membership cards should be counted. The Union also had signed authorization petitions, a fact Friedlander made known to Mims.

Friedlander also requested that a union steward from each of the two shifts be allowed to attend the card check and Mims indicated that was not a problem. He directed Friedlander to call Frank Castagna, RMC's project manager, to make these arrangements. Friedlander asked if Respondent would be willing to set up negotiating dates, assuming the Union did have a majority, and Mims said, ''Yes, that was not a problem.''

After this conversation ended, Friedlander contacted Jim Martin of PALM to see if would be available to conduct the card check and he agreed to do so on December 7. She then called Mims back with this information. Friedlander then faxed the following letter dated December 4, to Mims:

> Enclosed are copies of some of the recognition petitions that have been signed by bargaining unit personnel. These petitions only represent some of the day shift workers who have signed. I have not yet collected petitions from all the stewards or any swing shift workers.[10]
>
> Also enclosed is a copy of an authorization card. We tell people signing an authorization card means they want a union contract and they want SEIU Local 36 to represent them. It is a ''vote'' for the union.
>
> I am open to any discussion on who to include in the bargaining unit. However, if any workers are excluded it may cause problems for RMC. Our view is the bargaining unit should be all RMC non-supervisory employees. However, we may agree to just firewatch/topwatch as long as the issue will be an item for discussion during negotiations.
>
> As I mentioned on the phone, Jim Martin, the Executive Director of the Philadelphia Area Labor Management Committee has agreed to conduct a card check free of charge and is available Thursday, December 7th at 3:30 pm in his office, 125 N. 8th Street, 5th Floor.
>
> I hope to hear from you today regarding the card check issue.

Friedlander testified that the last sentence of the letter referred to the membership versus authorization card issue.

Mims testified that he received this letter by fax at 5:48 p.m. on December 4. After reading it, he reached a couple of conclusions. One was that Friedlander was trying to provide him with information prior to the card check so that Joe Garcia would make up his mind to agree to recognize the Union based on the petitions attached to the letter. He also believed that the information was sent as part of a campaign effort to urge Joe Garcia to make the decision to accept the results of the card count for recognition. He also testified:

> Well, the other purpose or the thing that struck me was that we had at least an understanding . . . that her effort to persuade the company to recognize was an ongoing effort to persuade the company to recognize . . . but I had not received any direction from Mr. Garcia contrary to what I had received on the 1st that the company had not decided to recognize.

Mims testified that on December 5, he talked with Richard Garcia who informed him that he had come into possession of a membership card rather than an authorization card. This card had been in Richard Garcia's possession since December 1, when it had been faxed to him by Frank Castagna, RMC's project manager at Philadelphia. Richard Garcia faxed a copy of this card to Mims. Mims told Richard Garcia:

> I said this is another reason why I think we have got to get up there and do this card check because here it looks like on the face of this document that somebody signing this might not be aware of what they are asking the Union to do. It is one thing to say I want to join. It is another thing to say I want them to be my exclusive representative when that is buried in the fine print and Rick agreed so we just added that to our agenda of things to cover at the card count.''

He also asked Richard Garcia if there had been any change in position with respect to recognition, stating:

> I was concerned about wanting to stay on top of it and I said on the face of this with the other questions that I have already raised, I don't think it is appropriate to make any decision one way or the other on recognition. I saw this as problematic.

[10] Joe Garcia testified that he had looked at the signature petitions sent with the letter and noticed that there were only about 175 signatures. He know that the number of involved employees at the shipyard was about 375 at that time. He remembered thinking, ''Boy, this not proving anything to us.'' The only thing it would not prove was whether the Union had majority status, thus one of RMC's reasons for attending the card check was to dispel its doubt of majority status.

Mims testified that he called Friedlander on December 5 and told her that he had received the petitions and raised the question of the membership card. Friedlander said that the Union had run out of authorization cards and they had used membership cards to fill in. She thought the number of such cards was deminimus and was willing not to count the cards. For reasons set out below, I do not believe this conversation took place on December 5, and believe that it occurred instead on December 4. I further question Mims' testimony with respect to this alleged conversation because the matter of whether membership cards were to be counted was still an issue on the day of the card count.

On December 5, Mims sent RMC a memo which in pertinent part reads:

> Subject: SEIU Local 36—Card Count
>
> This memorandum is for the record and memorializes conversations between us and between me and Ms. Friedlander of Local 36, SEIU.
>
> Ms. Friedlander, of the union, stated that she has roughly 90% of the employees at PNSY signed up in some fashion. As we discussed, the union used two different types of cards for their recognition effort. The principal card used indicated that the employee authorized SEIU to represent them in collective bargaining efforts with RMC. (A copy of that card has been forwarded to you earlier today together with a copy of the petitions in the possession of the union.) The other card indicated only that the employee wished to become a member of the union. I do not believe that the second card would be satisfactory proof of employee intention with regard to a certification proceeding. The union has agreed not to use those cards in the count.
>
> We should think about ways in which we might limit the size of an applicable bargaining unit. You are aware, I'm sure, that supervision is the key differential here as well as those persons who have access to Corporate personnel and administrative functions.
>
> After the card count, the union will ask RMC to execute a recognition statement indicating that the Company recognizes SEIU Local 36 as the exclusive bargaining agent for its firewatch employees. Frankly, the decision whether to do that at that time is largely a political one and should consider the numbers of employees that executed the cards. If the Company does not so certify, the NLRB will be asked to do go. In all likelihood it will. The next step will be to enter into collective bargaining with the union. (Insofar as the card count goes, I recommend that RMC not take a position at this stage regarding recognition. We should first observe and listen to what the Union has to say then carefully consider the Company's position.)

With respect to the reference to the NLRB, Mims testified that he meant that if the Company did not voluntarily recognize the Union, it would seek certification from the Board.

4. Credibility resolutions regarding the purpose of the card check

At this point, the obvious credibility gap between Friedlander's version of her contacts with Mims and that of Mims must be addressed. As can be seen from the evidence set out above, Friedlander contends that from the outset of her contacts with Mims, the Respondent agreed to a card check for recognition. Mims contends that at all times, he expressed to Friedlander that whether the card check would be for recognition was yet to be decided, and the decision was solely that of Joe Garcia. As a starting point, there must be a credibility determination as to whether Friedlander and Mims discussed the matter of membership cards on December 4 or on December 5. This is important because Friedlander contends that the last sentence of her December 4 letter to Mims refers to this matter. Respondent contends that that sentence is a reference to the ongoing question of whether Respondent had decided to go to the card check for recognition. I find Friedlander's testimony to be the most credible in this regard. The membership card was in Richard Garcia's possession on December 1 and as Richard Garcia and Mims conversed on December 4 at least twice, I find it difficult to believe that this matter did not come up considering their descriptions of these conversations indicated that they were thorough. Second, Friedlander's letter of December 1 to Mims states on its face that the Company had already agreed to a card check for recognition. Yet, until January 1990, the Company did not communicate in writing any dispute with this representation of the facts.

Moreover, the matter of membership cards versus authorization cards only appears to be an issue if the purpose of checking the cards is for recognition. No other reason given by Respondent for going to a card check would be affected by whether a signed card was a membership card or an authorization card. As stated by Mims in his December 5 memo, ''I do not believe that the second card [membership card] would be satisfactory proof of employee intention with regard to a certification proceeding.''

There is other evidence bearing on the question of whether the Union had been led to believe that the card check was for recognition and acted in good faith on that belief. Friedlander credibly testified that the Union would not have gone to a card check if the check were not for recognition. Certainly, I can see nothing to be gained by the Union having a check if the purpose was not for recognition. Absent such an understanding, the Union would have been much better off petitioning the Board for an election as quickly as possible given the turnover of employees at RMC's Philadelphia operation.

Friedlander testified that in the context of agreeing to the card check for recognition, Mims said there ''was no reason to go to the Board.'' His explanation that he used the phrase in the context of deciding the scope of the bargaining unit does not ring true. He used similar language in his December 5 memo to RMC, testifying that in that context it meant for certification. Other evidence reveals that at this stage of dealings with the Union, Mims was of the impression that the Union could receive certification from the Board by simply demonstrating it had majority status based on a card count. His after the fact explanations aside, his memo of December 5 also strikes me as entirely consistent with the position that the Union had been led to believe that the card check was for recognition. His last paragraph only indicates to me that the Respondent was not acting in good faith, reserving to itself without notice, the option of withholding recognition in the event that it did not win the count. I think it is also clear from the testimony of Richard Garcia that at least the man-

agement of RMC did not really believe that the Union had cards from a majority of its employees because of employee turnover and expected to win the count.

Richard Garcia testified that he discussed the matter of recognition with Joe Garcia on December 5. He stated that Joe Garcia gave him the following instructions:

> That we were not going to recognize the union. We wanted to gather as much information as we could. We needed to speak to the bankers and we needed to speak to the financial institutions. We needed to find out more information, contact our contracting officer's tech rep to see what his feelings were. Again talk to the contract officer just to get a feel as to what was involved. You just don't make a decision based on okay, I am going to sign. There are too many economic implications that could happen.

As reasonable as this may sound on its face, I cannot find from the evidence that such inquiries had been made to the date of the hearing in the case. In any event, none of these concerns were made known to the Union prior to the card check. For the reasons set out above and for others which will be discussed with respect to the card check and subsequent events, I find that the Union was led to believe by Respondent that the purpose of the card check was for recognition and that any reservations Respondent may have had were not communicated to the Union prior to the card check. In this regard, I also find that Mims had full authorization from Respondent to make binding representations for RMC as Respondent admittedly made him the ''point man'' in its dealings with the Union. No limitations on his authority were communicated in writing to the Union, and I do not credit his assertions that he informed the Union that Joe Garcia was not willing to be bound by the results of a card check.

5. The card check of December 7 and the parties' reaction

At the card check held December 7, the Union was represented by Friedlander, Frank May, the vice president of Local 36, Larry Smith, one of the Union's business agents, and employee shop stewards, Ernestine Sherrill-Harrell and Omar Ancram. Respondent was represented by Mims, RMC's vice president, Rick Garcia, Program Director Mike Grief, and Project Manager Frank Castagna.

On the morning of December 7, Richard Garcia had met with RMC's supervisors at the shipyard and passed out a list of supervisory do's and don'ts to be used in dealing with employees in the context of a union campaign for recognition. Respondent contends that the distribution of this list, together with the dissemination to employees earlier of a clearly antiunion statement included with no-solicitation rules, establishes that the Employer had no intention of recognizing the Union at the card check. Were it not for other strong evidence to establish that Respondent had agreed to a card check for recognition and the fact that a factual explanation exists for taking this seemingly contradictory action, I would agree with Respondent's position. I have discussed much of the evidence I believe supports the Union's position and will explain below why I believe preparing for a campaign was not in conflict with attending the card check for recognition.

The card check was scheduled to begin at 3:30 p.m., but Martin was late, arriving sometime after 4 p.m. During this waiting period, Friedlander testified that the parties just made small talk, with no discussion of anything pertaining to the card check. Mims testified that during this time, he asked Richard Garcia whether Joe Garcia had made any decisions with regard to the manner in which they should conduct themselves at the card count. Richard Garcia said that the Company's position was not to recognize, but to find out information stating, ''That we are here to find out what the employees want and essentially what our game plan was.'' Mims testified that Friedlander approached him and Richard Garcia as they were having this discussion and wanted to know if Joe Garcia had decided to accept the results of the card count. Mims testified that he told her the Company had not decided. Richard Garcia said that the only person to execute an agreement if one would be executed would be Joe Garcia. He testified that Friedlander shrugged her shoulders and walked away. Mims testified that there were no other conversations about recognition until Martin arrived. Contrary to this testimony, in testimony given before the U.S. District Court in the 10(j) proceeding, Mims testified that there was no discussion of the matter of recognition before Martin arrived.

Richard Garcia testified that the conversation did take place and Friedlander asked him and Mims if they were going to recognize. He testified that Mims responded that Joe Garcia had not made a decision to recognize and Richard Garcia stated that RMC's purpose at the meeting was not to recognize. ''My purpose at the meeting was to come up and find the employee concerns, to find out if the numbers that they had were actually the numbers they said. They couldn't have 90 percent. She had sent me a fax and the petitions that I got had 178 names on them. I just totally didn't believe that they had the numbers that they had.''

He testified that Friedlander stated nothing in response. Richard Garcia testified about at least three occasions when he, at least in his own mind, had serious doubts about the Union's claim to represent a majority of RMC's employee. One was in one of his December 4 conversations with Mims, another was the occasion discussed above, and the third was just before he departed from the card check. I find this lack of belief of union majority status on Richard Garcia's part explains why Respondent would prepare its antiunion campaign literature while at the same time going to the card check. RMC did not think the Union had a majority and it would not have to extend recognition. Respondent's actions after the card check support this view further.

I credit Friedlander's testimony that nothing was said about the purpose of the card check before the check was made for three reasons. First, if as I have found, the Union believed the card check was for recognition, there was no need to discuss its purpose again. Second, the inconsistent testimony of Respondent's witnesses Richard Garcia and Mims detracts seriously from the credibility of both of these witnesses, and third, because other testimony of Richard Garcia with respect to this meeting was clearly not true. Moreover, and less importantly, from my observation of Friedlander's demeanor while testifying herein, I cannot believe she would simply ''shrug her shoulders'' and walk away after being told that the decision to recognize did not turn on the results of the card count.

When Martin arrived, the parties went to his office and everyone introduced themselves. Martin said a little about PALM and the card check started. Friedlander agreed to exclude the membership cards for the purpose of the card check.[11] All the signed cards were turned over to Martin, and the Respondent supplied a computer generated employee payroll list. Some of the names on this list had been highlighted and instructions given that they were not to be counted. The payroll list did not contain signatures for comparison with those on the authorization cards, but this was not raised as an objection and the count commenced.

While Martin and an assistant counted the cards, the parties remained together in another room. Friedlander testified that during this time, the parties discussed a variety of subjects, but nothing concerning recognition. Again, I credit this testimony over that of Respondent's witnesses as set forth below.

Mims testified that during this time, Friedlander again asked that if the card count came out in favor of the Union, was RMC prepared to recognize? Mims stated that he replied that he had no instructions from Joe Garcia and he had not decided one way or the other.[12] Richard Garcia testified that he, not Mims replied, and that he flatly stated, ''We are not here to recognize.'' Garcia said that Martin was still in the room when this conversation occurred and further, that Friedlander did not respond. I do not credit this testimony. It is inconsistent as between Mims and Richard Garcia, and is totally refuted by the admitted actions of the two employee participants who were in a position to hear Richard Garcia's denial that recognition was the purpose of the check. When, a will be discussed below, the results of the card check where made known to be favorable to the Union, the employee participants expressed their joy openly, action entirely inconsistent with what one would expect if they did not believe they had achieved recognition. Further, as noted below, Martin testified that he heard nothing prior to the card check which would indicate that the card count was not for recognition.

Martin testified that he had previously conducted three or four card counts for recognition at the behest of the Union. It was his understanding that this was also the purpose of the December 7 card check. Martin heard nothing during the time the parties were at the card check which would contradict this understanding. He testified that before conducting the check he went through the procedures he would follow with the parties. He told them he would take the Union's cards as certification of employee authorizations for the Union as collective-bargaining agent and compare them with whatever the Respondent supplied. Martin and his assistant then compared the names on the cards with a current payroll list of employees supplied by RMC. After the count was complete, he took the final tally back to the parties.

Martin announced that 266 signed authorization cards matched the payroll list, another group did not match and that there were 22 membership cards. The total bargaining unit as of December 7 was approximately 399 employees. Mims testified that Martin said, ''Well, it looks like you have a Union,'' and Mims replied, ''Not quite.''[13] Everyone testifying on the matter of the two stewards reaction to the count agreed that they were happy. Martin filled out the results on a form provided by Friedlander. This form reads as follows:

CARD CHECK FOR RECOGNITION

Research Management Corporation and SEIU Local 36 have agreed to conduct a card check for union recognition covering firewatchers employed at the Philadelphia Naval Ship Yard [sic] in Philadelphia.

Today, December 7, 1989, I examined employment records furnished by the Company which had employee signatures on them and cards requesting Union Representation, also signed by the employees.

The signatures appear valid and match one another. A majority of employees selected the Union.

Number in Bargaining Unit—399
Number for the Union—266
Signed [James Martin & Yvette Torres]

Martin had copies made of this form and testified that he gave one to everyone present. Mims corroborated Martin's testimony that everyone got one of the for Friedlander recalled that all of RMC's representatives took one.[14] No one from Respondent said anything about the form or disputed the results of the procedure. Union Representative Frank Mayo testified that he heard nothing from the RMC representatives about the purpose of the card check while at PALM's office. He testified that after Martin distributed the form with the count filled in, no one from RMC had any comment. He also testified that when Friedlander gave Respondent's representatives the recognition form for signature, Mims said that Joseph Garcia would have to sign it.

Mims and Richard Garcia then asked if they could meet with Friedlander privately. According to Friedlander, they went into Martin's office where Mims said they would sign the recognition agreement right away if Friedlander would agree to an open shop. Friedlander said, ''No, that was a subject for bargaining.'' Mims then raised some concern about the Union's initiation fee, saying it was too high. Friedlander replied that it was none of his business. The conversation ended and the three returned to the conference room where Friedlander asked Mims if he would sign the recognition agreement. Mims said, ''It was up to Joseph Garcia, but that the options were really limited.''

With respect to these latter conversations, Mims testified that he and Richard Garcia excused themselves and he asked Richard Garcia if there had been any change in the Company's position with respect to the decision on whether to recognize and Richard Garcia told him, no. He testified that Friedlander then approached them and asked whether they were going to recognize, and he reiterated that the decision to recognize had not been made and that Joe Garcia would be the one making that decision. Mims admitted that the matter of the closed shop versus open shop and the initiation

[11] One must remember that Mims testified that this matter had been resolved in his alleged conversation with Friedlander on December 5.

[12] If one believes Mims at this point, and I do not, then either Mims or Joe Garcia are not telling the truth. Joe Garcia testified forcefully that he instructed this team of representatives not to recognize the Union, not to sign anything.

[13] Only RMC witnesses remember this comment. Significantly, Martin, the neutral third party to whom it was directed, did not.

[14] Richard Garcia testified that none of RMC's representatives took one of these forms. I do not credit this aspect of his testimony nor do I credit his testimony when it differs from either that of Mims or Friedlander.

fee were brought up during this conversation. Again, I credit Friedlander's version of the conversation because she appeared to be a more credible witness that either Mims or Richard Garcia, and both of these gentlemen gave inconsistent and at time, unbelievable testimony.

Respondent contends that the vote tally form supplied by Friedlander is evidence that she was trying to in some way either mislead RMC into recognition or force RMC to agree to recognize, pointing out that it was not shown to RMC before the card count whereas the recognition agreement had been shown. I do not agree. Though the form speaks of a signature comparison, Friedlander was not shown to know what documents RMC was bringing to the card check prior to attending. Further, though RMC's representatives could have objected to the language on the form, they did not.

I also believe that RMC's actions immediately after the card check are more supportive of the Union's position than its own on the purpose of the card check. If, as asserted by its witnesses, Friedlander had been told at least twice before Martin returned from the count that it would not recognize the Union based on the count, why did they feel compelled to suddenly leave the room and have a private conversation with Friedlander? If one believes Richard Garcia's testimony, he had clearly said that RMC would not recognize the Union as Martin was leaving with the cards. Why not simply reiterate this position in the room with Martin and the other persons present? Why not reject the form supplied by Friedlander as being incorrect on its face? I believe that the reason for Mims and Richard Garcia taking the action they did is that they were surprised at the outcome of the count and felt the need to come up with an appropriate response. I cannot find another good reason why they did not just reject the form for not accurately stating the purpose of the card check and not accurately stating the procedure followed, as signatures were not checked. Similarly, I can find no good reason consistent with RMC's position why they did not openly state in front of Martin and the others that the purpose of the count was not for recognition.

In other campaigns, after obtaining recognition through card counts, the Union has asked employers to sign agreements similar in language to the one proffered RMC. In some instances, employers have preferred to word and prepare their own recognition agreements, as the one used by the Union includes language agreeing to certain things which could be subject to negotiation. Friedlander took Mims refusal to sign the recognition agreement she offered as meaning Respondent wanted to draft its own agreement.

At this point the Union believed it had secured recognition as it had participated in a card check for recognition, Respondent has agreed to recognize the Union based on the cards and there had been no objection voiced by Respondent before, during, or immediately after the check on December 7. Friedlander asked Mims who she should deal with in the Company for setting up dates for negotiations and to get the recognition agreement, and who she should deal with for worksite related problems Mims said that she should talk to Rick Garcia about worksite problems and with him about negotiations.

Richard Garcia testified also that before leaving, he, Mims and Frank Castasna had a caucus. At the caucus, Richard Garcia expressed his disbelief at the count. He did not think that RMC's personnel list was correct and he did not believe that authorization cards were ''appropriate'' to RMC personnel. He expressed concern that he did not see the cards himself. None of these concerns were expressed to either Martin or the union representatives. I believe that it is questionable whether Richard Garcia actually said these things to Mims and Castasna as neither of them corroborated these statements, though testifying that there was a brief caucus. But again, I find the evidence significant as indicating that RMC was at the meeting with an agreement to recognize and did not expect to recognize as it did not expect to lose.

After the meeting ended, the Union began preparing contract proposals for negotiations. Friedlander attempted unsuccessfully to reach Mims thereafter until December 19. Mims refused to return her calls. When she did reach him on the December 19, she told him that she would like to set up negotiating dates. She testified that his response was sort of a joke, ''he thought they would just wait until Easter or something like that.'' The conversation ended then with Mims supposed to call Friedlander back. He never did. Mims agreed he made the ''Eastern'' remark.

Mims testified that on the day following the card check, he prepared a memorandum for RMC. The recommendations in the memo were verbally given to Richard Garcia on December 8 and the memo was sent December 11. The memo, as pertinent, reads as follows:

> This memorandum follows my visit to Philadelphia to a meeting with representatives of the Service Employees International Union Local 36 (SEIU). As you know, the union has been busy gathering cards from the PNSY employees in support of efforts directed to unionization of the workforce.
>
> The employees were asked to execute cards indicating their election of SEIU Local 36 as their exclusive bargaining agent for the purpose of entering into a collective bargaining agreement with RMC. Cards collected by the union were counted by a representative of the Philadelphia Area Labor Management Committee. That organization is sponsored by labor and industry in the Philadelphia area and provides election and card count supervision/verification. Martin, Executive Director of the Committee certified that of 399 employees in the bargaining unit [those figures were supplied by payroll and excluded executive and administrative personnel], 266 submitted cards asking recognition of the union. Frank Castagna stated that the actual current number of employees at PNSY is actually 350, so the percentage asking recognition may indeed by higher.
>
> The logical question is where we go from here. The union has asked, based upon the results, that RMC execute the recognition agreement. This step is in lieu of a formal election supervised by the National Labor Relations Board, the results of which appear certain. In reality, the Board would likely take the results of the card count and simply direct RMC to enter into negotiations with SEIU over the terms and conditions of a collective bargaining agreement. At this point, I recommend that a recognition agreement be executed. (Whether it is in the form recommended by the union is something that we may discuss further.)
>
> [Four paragraphs I do not consider material to this decision are here omitted.]

> With these points in mind, I believe the best course would be for the Company to agree to recognize the union and focus its creative energies upon negotiations directed towards the terms of the collective bargaining agreement.[15] If you wish to discuss this in greater detail, I remain at your disposal.

Joe Garcia testified that after the card check he spoke with Richard Garcia about what happened and was told, inter alia, that Friedlander kept trying to get him to sign the recognition agreement. Joe Garcia commented, ''[W]ell, tough because we are not going to sign it.'' After December 12, Joe Garcia replaced Mims as the Company's counsel for labor related matters.

In the beginning of January 1990, Friedlander received a letter dated January 4, 1990, from Joseph Garcia. This letter states:

> In response to your request that we recognize SEIU, Local 36, please be advised that we doubt that you represent an uncoerced majority of our employees and, therefore, will not recognize your Union.
>
> We believe that the best and the fairest way to determine whether a union has majority support is through a secret ballot election. We suggest, therefore, that if you feel you represent a majority of our employees, you file a petition for an election with the National Labor Relations Board.

I believe this letter has significance on the matter of recognition. There is nothing in it which would support the testimony of Respondent's witnesses that any reservations were made prior to or at the card count about the count being for recognition. There is no reference to the count being for any other reason than for recognition. With respect to the reference to RMC's doubt about an uncoerced majority, there is no evidence in the record which would cast doubt on the authenticity of the signatures on the authorization cards nor is there any evidence of any coercion by the Union. All the cards used at the card count were placed in the record of this proceeding and no questions about them were raised by Respondent. The involved employees' W-4 forms were also placed in evidence to demonstrate the authenticity of the signatures on the authorization cards. I find as fact that as of the date of the card check the Union did have properly signed authorization cards from a clear majority of the Respondent's involved employees.

6. Conclusions with respect to the recognition and refusal-to-bargain issues

In *Green Briar Nursing Home*, 201 NLRB 503–504 (1973), the Board stated the law applicable to the instant case as follows:

> In *Linden Lumber* [190 NLRB 809 (1972)] and our later decision in *Sullivan Electric Company* [199 NLRB 809 (1972)], we made it clear that an employer will not be found in violation of Section 8(a)(5) of the Act solely upon the basis of his refusal to accept union-proffered evidence of majority status other than the results of a Board election unless his conduct precluded resort to an election. In those cases we pointed out that an election would be precluded by substantial employer misconduct in violation of the Act, *by an employer's action in agreeing upon another method of ascertaining whether a union majority existed, or by an employer's conduct of a poll of employees which established the existence of a majority*. [Emphasis added.]

Accord: *Without Reservation*, 280 NLRB 1408, 1417 (1986); *Crest Industries Corp*., 276 NLRB 490, 495 (1985); *Gregory Chevrolet*, 258 NLRB 233, 239 (1981).

I have found that the Respondent agreed to recognize the Union on proof of majority status through a card check. I have further found that Respondent did not communicate its intention not to recognize the Union until after the card check had been completed and the Union's majority status established. If Respondent believed it had not authorized its attorney, Mims, to agree to a card check for the purpose of recognizing the Union if it had majority status, I believe it was incumbent upon the Respondent to notify the Union of this limitation on Mims' authority. It did not do so as it did not respond to Friedlander's December 1, 1989 letter clearly stating that Respondent had agreed to a card check for recognition.

If Respondent claims that it did not fully understand the implications of what it had agreed to, I find that it is still bound by the results of the card check. One of the admitted purposes of the card check from Respondent's standpoint was to verify whether the Union did have majority status among its employees. In *Idaho Pacific Steel Warehouse Co*., 227 NLRB 326 (1976), the Board affirmed an administrative law judge's reasoning in a case in which an employer obtained its knowledge of majority status through a card check conducted by a third party. The administrative law judge reasoned as follows:

> In the *Snow*[16] case, the employer had expressly agreed to resolve the issue of the union's representative status by a means other than a Board election. However, in *Harding Glass Industries, Inc*., [216 NLRB 331 (1975)] where a card check was conducted by a disinterested third party, there was some question as to the parties' agreement. The employer had told the union he would not respond to the union' demand for recognition until he consulted with counsel and that he had initiated the card check merely for the purposes of verification of signatures. Notwithstanding this question as to the ''voluntarism,'' i.e., whether in fact that employer had agreed to let its ''knowledge'' of majority status be established by means other than a Board election, a majority of the Board held that the employer was bound to recognize the union's majority after participating in the card check. The employer, held the Board, had sought the card check, and after it occurred the employer had no reasonable basis for doubting the union's majority.
>
> With respect to Respondent's defense in the instant proceeding that it did not understand the implications of a card check when it agreed to the procedure, *Harding Glass, supra*, would appear to indicate that whether or

[15] By creative energies being focused elsewhere, Mims testified he meant litigation.

[16] *Snow & Sons, Inc*., 134 NLRB 709 (1961).

> not the employer intended to create a binding obligation by assenting to or requesting a card check the test is not this intent, but whether the employer has a good-faith doubt of majority status. In the face of an impartial verification of card authenticity, it would appear that the employer cannot successfully assert a good-faith doubt, regardless of his intent to be bound by the results of a cross-check of union authorization cards or his purported lack of understanding ag to the implications of his agreements. [Id. at 330–331.][17]

The Respondent did not have the authorization cards thrust in its face. The Union made an offer to prove its majority support through a card check. The Respondent was free to reject the offer. After obtaining an opinion from its attorney, its representatives participated in a card check through an agreed on procedure to find out if, in fact, its employees supported the Union. Having made a reasoned decision to accept the Union's offer, the Respondent is not free to reject what it voluntarily sought to learn. On being informed of the Union's majority support, it was obligated to bargain with the Union.

For all the reasons set forth above, I find that by refusing to recognize the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit on December 7, 1989, and by refusing thereafter to date to so recognize and bargain in good faith with the Union, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

C. *Respondent's Alleged Unlawful Statements to and Discharge of Ernestine Sherrill-Harrell (CCAs 2 & 3)*

1. Sherrill-Harrell's early union activity and Respondent's knowledge thereof

Sherrill-Harrell was employed by RMC as a firewatch in September 1988 and was discharged on January 24, 1990. As noted earlier, Sherrill-Harrell was one of the originators of the union campaign and was the most active campaigner until she was terminated. In October 1989, prior to seeking out the Union, a number of RMC employees led by Sherrill-Harrell held two or three meetings at lunchbreak to discuss their problems and grievances with Respondent. Comments about these meetings were addressed to Sherrill-Harrell by her supervisor, Clarence Johnson, and another supervisor, Lee Williams on two occasions stated to Sherrill-Harrell that she had been at a meeting almost immediately after the involved meetings. Supervisor Johnson on one occasion after a meeting said to Sherrill-Harrell, ''Did you cover everything.'' On another occasion, after a lunchbreak meeting, Sherrill-Harrell and some coworkers were discussing the Union while on worktime when Supervisor Johnson approached and said, ''You can't talk about that on company time.'' Sherrill-Harrell replied that they could so long as the conversation did not disrupt production, and at the time the employees had not been given work assignment. Johnson said, ''Did you cover everything,'' and left, calling Sherrill-Harrell, ''Norma Rae.''

Another supervisor, William Brindisi, observed Sherrill-Harrell talking with some coworkers and admonished them, ''Get away from her, she's a politic.'' Sherrill-Harrell replied, ''The word isn't politic. The right word is politician and the correct word is activist.'' She requested a meeting with management about this incident and did meet with Frank Castagna, who said he would speak with Brindisi.

After contacting the Union, Sherrill-Harrell actively solicited other employees to sign authorization cards, including using a bullhorn outside the shipyard gates to solicit support. This activity was observed by several supervisors. One of the supervisors, Donald Singleton, asked her what she was doing, and she told him the employees were starting a union.

2. The incident giving rise to Sherrill-Harrell's warnings and discharge

The circumstances leading to the discharge of Sherrill-Harrell began in a meeting of about 20 or 21 employees and supervisors to hear a presentation about a 401(k) plan sponsored by RMC. The meeting was held on January 23, 1990, at a building located at the Philadelphia Shipyard. At the meeting, a spokesperson for the plan completed the presentation and passed out leaflets explaining the plan. Then the persons left the room and called out employees individually to see if they wanted to participate in the plan. The employees and supervisors remaining in the meeting room began casually discussing the plan, or discussing other matters. Assistant Project Manager (APM) Joseph Brown, as pertinent, was reading the sports section of a newspaper. Sherrill-Harrell's version of what happened next follows.

Sherrill-Harrell commented to a group of employees talking with her that the Union could get them a better plan. She told the employees that she was not taking the plan and would only sign her initials on anything she was asked to sign with respect to the plan. A supervisor, J. T. Williams, commented that the company plan would benefit everyone, and Sherrill-Harrell said it would, but that the Union could also get one, and that RMC was ''getting themselves a deal.'' She also said that she was ''tired of RMC getting over on the people.'' At this point, according to Sherrill-Harrell, APM Brown ''jumped up and told me to shut up.''

Sherrill-Harrell became angry and responded, ''Don't tell me to shut up, nobody told me to shut up.'' She testified that APM Brown ran toward where she was sitting and shouted, ''You silly girl, you need to grow up.'' ''If you have so much negative stuff to say about the company, why don't you just resign?'' Sherrill-Harrell replied, ''Make me resign.'' APM Brown then told her to get out and Sherrill-Harrell said she was not going anywhere. APM Brown then said he was going to tell Project Manager Frank Castagna. Sherrill-Harrell countered, ''Go get your daddy, he's not mine.'' APM Brown asked, ''What did you say,'' and Sherrill-Harrell responded, ''You heard me.'' Brown then left the room and Supervisor Clarence Johnson followed.[18]

[17] See also *E. S. Merriman & Sons*, 219 NLRB 972 (1975), and *Sullivan Electric Co.*, 199 NLRB 809 (1972).

[18] Sherrill-Harrell had been involved in a previous incident involving APM Brown. In August 1989, she telephoned Brown and asked him to connect her with a fellow worker. This individual was her cousin and she wanted to tell him that his wife was dying. APM Brown refused the request, so Sherrill-Harrell went to the RMC office at the shipyard and confronted APM Brown. She testified that APM Brown told her that he was in a meeting and could not get her cousin. Sherrill-Harrell said, ''Thank you for what you did.'' The Re-

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Fellow firewatchers Leonard Keith and Darryl Shaw were present and generally corroborated Sherrill-Harrell's version of this incident.

Sherrill-Harrell testified that APM Brown returned with Assistant Project Manager Terry Carter, who told her, ''You are not supposed to be talking about that on company time.'' Sherrill-Harrell told him, ''Joe Brown told me to shut up.'' Supervisor Brown denied this saying he told he to be quiet. He also told Carter about Sherrill-Harrell telling him to ''go get his daddy.'' Carter again told Sherrill-Harrell that she cannot talk about the Union on company time. She replied that she was not disrupting production, and Carter responded, ''You're still on the clock so you're still under supervision.''[19]

Sherrill-Harrell was then called out of the room to talk to the 401(k) plan spokesperson. She told him that if Respondent would negotiate with the Union, she would consider the plan, but not otherwise. She indicated she believed that the other employees wanted the same thing. Sherrill-Harrell and the other employees attending the meeting were then given the remainder of the day off.

The next day, after working part of her shift, Sherrill-Harrell was approached by her supervisor who said that Project Manager Frank Castagna wanted to see her at his office. Sherrill-Harrell demanded to take another employee with her as a witness and did. However, this person was not allowed into RMC's office with Sherrill-Harrell. When she got to the office, in addition to Castagna, APM Joe Brown, and Supervisors Clarence Johnson, J. T. Williams, Penny Coshe, and Terry Carter were also in attendance. Castagna gave her termination papers which she began reading. Sherrill-Harrell laughed and told him what she had read was a lie. Castagna said to sign the papers and she refused. While a copy of the termination papers was being made, APM Joe Brown brought up her remark at the earlier meeting saying she said, ''Go tell my father.'' Sherrill-Harrell responded, ''That's a lie. I said to go tell your daddy.'' Sherrill-Harrell asked Castagna if she could have a witness in the office and he replied that the Respondent did not recognize the Union and thus did not recognize stewards. She could not have a witness.

4. Respondent's reasons for discharge and supporting proof

Castagna testified that he made the decision to terminate Sherrill-Harrell ''because of the events of that day as far as I was concerned were insubordinate. The altercation was loud and disruptive. She failed to follow a direction and [that] was an insubordinate act.'' He also testified that he took into consideration Sherrill-Harrell's past disciplinary record, which included a 3-day suspension for unexcused absence, and an incident in November 1989 when she called CEO Joe Garcia with a complaint, bypassing Castagna.

Castagna also testified that Sherrill-Harrell had been nominated as employee of the year and was a runner up. She had been named employee of the month on occasion and had received letters of commendation from RMC.

Management investigated this matter by getting statements from APM Brown and three supervisors in attendance, J. T. Williams, Keith Saunders, and Clarence Johnson. Contrary to its usual procedures, Sherrill-Harrell was not asked about the incident nor were statements taken from any rank-and-file employees in attendance. The formal discharge notice prepared by Castagna states that she was discharged pursuant to Employee Manual page 4-1, #9, Insubordination to either RMC or other Shipyard or Naval Supervisors. The form elaborates stating that (a) employee was loud and disruptive during work status, (b) employee refused to follow directions of APM, and (c) employee was abusive to APM. In a separate report, APM Brown gave his version of the incident thusly:

> While attending a seminar for the worK plan, F/W Ernestine Harrell begin to have verbal outburst, stating that RMC had the employees to come to the seminar, because RMC was getting a percentage of the 410K Plan, and that local 36 and Harrell was not going to stand for RMC to get over on the employees anymore. That she is tired of RMC. I asked Ms. Harrell to be quiet. She told me to shut up that she can say what ever she want and wherever she wanted. I replied if she was so much against the company why don't she just resign. She stated that she have something that she have to do and that I should mind my own business, because there's nothing that I could do. Ms. Harrell by this time was beginning to get even louder and I told her again to be quiet and she shouted no and that I was nobody. I told Ms. Harrell that I was going to call Frank Castagna and she stated I better go and call my father. Ms. Harrell was in violation of company policy #9 Insubordination to a assistant project manager.

Supervisor J. T. Williams prepared an incident report that describes the incident thusly:

> Harrell is in violation of RMC rule #9 ''Insubordination'' at building #4 401K plan meeting. Ms. Harrell was telling the personnel not to sign their names, to the work plan, but to write their initials instead. Ms. Harrell then started talking about Local 36. APM Brown told Ms. Harrell not to discuss Local 36 and Ms. Harrell refused.

Supervisor Keith Saunders prepared a similar report which reads:

> Harrell was insubordinate to APM Joe Brown. When APM Brown asked for everyone's attention Ms. Harrell started to yell out telling people not to sign for the 401K plan. But instead ask for local 36. Mr. Brown asked her not to talk about the matter in hand, she refused.

Supervisor Clarence Johnson prepared a detailed incident report which reads:

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spondent's version of the incident is similar except that it indicates that Sherrill-Harrell was distraught and perhaps abusive toward APM Brown. Frank Castagna took no formal action with respect to this incident (even though APM Brown urged termination) because of the stress Sherrill-Harrell may have been feeling under the circumstances.

[19] No one contradicted Sherrill-Harrell's version of APM Carter's remarks, which were directed only at her union-related activity, no her abusive actions toward APM Brown.

At the beginning of the incident, Ms. Ernestine Harrell was instructing the firewatches who attended the seminar not to sign or accept anything that the 401K plan representatives (or RMC) had to offer. She started making these statements after the 401K plan reps left the conference room. Ms. Harrell also told the firewatches ''Why should you accept this offer when the Union is going to get the employees a plan.'' She told the firewatches to just put their initials on whatever the reps had them to sign, because she was going to put her initials and put an X behind them on hers. She also said the workers not to sign because RMC could be playing a trick on the workers. At that time APM Joe Brown asked Ms. Harrell to be quiet, that she was disrupting the meeting and if she disliked the company so much why don't she resign? She told APM Brown that she wasn't talking to him and that she was not going to resign because she had something to do. So APM Brown said he could not understand people like her who always had something negative to say about the company, but continue to work for the company and asked her once again to be quiet. Harrell continued to talk. APM Brown told her to shut up and Mrs. [sic] Harrell told APM Brown to shut up. She told him to shut up several times. Brown said ''why don't you just resign'' and Ms. Harrell said, ''You make me resign.'' She made that statement several times. All the time she's talking to APM Brown, she is talking loud. APM Brown told her I think you need to talk to PM Frank Castagna. Ms. Harrell said she don't care who she talk to. So APM Brown went to leave the room to make a phone call to the office and while he was leaving, Ms. Harrell told APM Brown ''go ahead and call your Daddy.'' APM Brown said to Harrell, what did you say? Ms. Harrell said to Brown ''You heard what I said.'' APM Brown left the room and returned with PM Terry Carter. Mr. Brown asked her to repeat here statements for Mr. Carter. She told Mr. Carter and Mr. Brown that she didn't attend the meeting to be supervised, she attended the meeting to hear about the work plan. PM Carter reminded her that she was still on the clock and that RMC was still paying her to attend the seminar and as long as she is on the clock, she will be supervised. Ms. Harrell did not have a reply. APM Brown and Mr. Carter left the conference room. While they were out of the room, she had some of the employees gathered around her and she started talking to them in a whisper. Several supervisors were present during the entire incident.

5. Credibility resolutions and conclusions with respect to the discharge of Sherrill-Harrell

I do not credit APM Brown's version of the incident in any respect where it conflicts with that of Sherrill-Harrell's. His testimony, especially on cross-examination, is difficult to accept and certain critical statements, such as Sherrill-Harrell calling him a nobody are contradicted by the written reports above and the direct testimony of Supervisor Johnson, among others. I also credit the written reports of the supervisory personnel over their direct testimony as the reports were prepared at a time much closer to the event than this hearing. In this regard, I credit the detailed version of these events prepared by Supervisor Johnson over the others as he appeared more observant and was not a direct participant. Significantly, his version and that of Sherrill-Harrell and the other firewatchers testifying are essentially similar.

The initial consideration in deciding whether Sherrill-Harrell's discharge was unlawful under the Act is the suggestion of whether her actions were protected. I believe that they were. Although the employees at the meeting were being paid, at the time of the incident that resulted in the termination, everyone remaining in the meeting room was really in a break situation. They were obviously not engaged in performing their normal duties and were not under any form of active supervision. Indeed, the highest ranking supervisor present, APM Brown, was engaged in reading the sports section of the newspaper. Therefore, I find that Sherrill-Harrell and her fellow employees were actually in a nonwork situation and her discussion of union related matters was not precluded by RMC's rules and was protected activity.

I cannot find from the evidence that there was anything about the manner in which Sherrill-Harrell was addressing the other employees which reasonably could have prompted APM Brown's direction for her to shut up or be quiet. The credible evidence indicates that she was talking in a normal or near normal voice tone and level. I believe that it was only the content of what she was saying that stirred APM Brown to action. Telling the other employees that the Union could get the employees a better plan and the Company was trying to take advantage of the employees was evidently too much for APM Brown. I believe that all of Sherrill-Harrell's comments to her fellow employees were fully protected. She was not encouraging them to stop work or disrupt production or any other action that reasonably prompt an employer to squelch her statements. She was merely encouraging the other employees to not accept a company retirement plan, but wait for union negotiated plan.

Therefore, I find that without lawful provocation, APM Brown started the confrontation with Sherrill-Harrell. The most credible evidence reflects that he told her to be quiet, then shut up. Given Sherrill-Harrell's strong belief in her rights as a union activist, and her previous encounter with APM Brown in August 1989, it is understandable that she told him in turn to be quiet or shut up. APM Brown then urged her to resign for her negative feelings toward RMC and she refused advising him to make her resign. He began to take steps in that direction by stating that he was going to get Project Manager Castagna. Her comment to this action, ''Go call your Daddy,'' in the heat of the argument started by APM Brown seems a not unlikely response to APM Brown's admonishment, ''You silly girl, grow up.'' In any event, under the circumstances, I do not find Sherrill-Harrell's behavior opprobrious or insubordinate considering APM Brown's unlawful and aggressive attempt to stifle her protected activity and his unlawful urging that she resign. I believe the escalation of the confrontation must be the responsibility of APM Brown, who though giving an unlawful direction could have done so dispassionately, raised the matter to another level by suggesting that Sherrill-Harrell resign and immediately seeking out Castasna, ostensibly to have Sherrill-Harrell terminated or otherwise disciplined.

Contrary to RMC's formal termination report findings, I find that Sherrill-Harrell was not loud and disruptive during work status, lawfully refused to follow the directions of

APM Brown and was only abusive, in a really mild way, to APM Brown following his unlawful and abusive action toward her. The record is replete with credible evidence of Respondent's antiunion sentiments, sentiments made known through literature distributed to employees and management meetings with supervisors. Sherrill-Harrell's role as a union activist was also well known to Respondent's management. Therefore, I find that Respondent had knowledge of Sherrill-Harrell's union sympathies and activities, harbored antiunion sentiments, and committed unfair labor practices by directing her to cease speaking to other employees about the Union at the 401(k) plan meeting and urging her to resign when she refused. I also find that Sherrill-Harrell's protected activity at the meeting was the primary, if not the only, motive behind her discharge.[20]

Stein Seal Co., 237 NLRB 996, 997 (1978); *Rockwool Industries*, ., 218 NLRB 577, 577–579 (1975); *AMC Air Conditioning Co*., 232 NLRB 283, 283–286 (1977); *Turnbull Cone Baking Co*., 271 NLRB 1320, 1359 (1984).

As the General Counsel has made a prima facie case in support of the complaint allegations in this regard, under the Board's *Wright Line* test,[21] Respondent has the burden of demonstrating that Sherrill-Harrell would have been discharged even in the absence of her protected conduct. I find that it has failed to so demonstrate.

First, Respondent's responsible official in matters of employee discharges at Philadelphia, Frank Castasna, testified that the normal procedure before terminating an employee is to investigate the matter, including interviewing the persons involved. Castasna did take statements from APM Brown and three supervisors in attendance, but never heard Sherrill-Harrell's side of the story until after she was terminated. Nor did he interview any of the employees in attendance at the meeting. It appears to me that Castasna was more interested in building a case against Sherrill-Harrell than in determining just what happened.

Similarly, Respondent's response to Sherrill-Harrell's action seems excessive when compared to Respondent's actions taken with respect to other employees. Castasna testified that he had been the project manager for the last 2 years and that from January 1988 to January 1990, there had been between 100 and 300 discharges for cause. Of these, six, including Sherrill-Harrell, were for alleged insubordination. Charles Munson, one of those so discharged, wrote an unsolicited letter to CEO Joe Garcia demanding that Garcia negotiate with the Union and referring to him as a ''jerk'' and as a ''pussy.'' Munson was discharged on January 23, 1990, for the letter and for other ''multiple infractions'' in the prior 90 days. Isiah Heath was terminated on March 20, 1989, for drunkenness and insubordination. In the termination reports, Heath admitted that he had been drinking and had appeared obviously drunk at work. When he was asked to turn over his identification badge, he refused and called APM Brown an ''Uncle Tom.'' Walter Jefferson was terminated on February 27, 1989. Supervisor John Franklin had reprimanded Jefferson for his failure to carry out his cleanup duties. Jefferson was then brought to APM Brown. When Brown informed Jefferson that he was being sent home early because he had not performed his duties, Jefferson began calling APM Brown vulgar names and then threw his identification badge in APM Brown's face. He was subsequently discharged. James Bostic was discharged on April 11, 1990. He had gotten into a near physical fight with another employee and when Supervisor Clarence Johnson attempted to instruct Bostic to report to APM Lou Harvey, Bostic became disruptive and refused to follow Supervisor Johnson's instructions and also appeared to be provoking Supervisor Johnson into starting a fight. Bostic had previously been insubordinate and abusive to Supervisor Johnson, and Johnson on that earlier occasion had recommended Bostic's termination. PM Castagna decided to suspend Bostic instead.

I find that the other discharges for insubordination were for far greater offenses than that of Sherrill-Harrell and in none of the cases was prompted by the unlawful behavior of a supervisor. I also find that the relatively light treatment of Bostic in a situation that involved the possibility of a physical altercation to be clearly disparate treatment.

Finally, Respondent has contended that Sherrill-Harrell's past disciplinary record played a part in her discharge in that it demonstrated a predilection on her part for confrontation. I do not accept this contention and believe that, if anything, her past record in this regard supports the General Counsel's case. As noted earlier, in March 1989, Sherrill-Harrell was suspended for an unauthorized absence. This offense obviously has nothing to do with confrontational behavior or insubordination. She did have a confrontation in August 1989 with APM Brown over the matter of trying to find her cousin to inform him that his wife was dying. There, though APM Brown's report recommends termination and indicates Sherrill-Harrell was acting irrationally and abusively, not even a warning was issued to Sherrill-Harrell. In this preunion activist timeframe, Castagna decided to take all the circumstances into consideration, including Sherrill-Harrell's reasons for her action.

However, in November 1989, after her union activity had been noticed, Castagna issued Sherrill-Harrell a warning with respect to which even he had a difficult time explaining on the record exactly what she had done to warrant the warning. There were two incidents, one involving Supervisor Brindisi on October 13 and the other involving Supervisor Gibbs on October 16 (both dates before Sherrill-Harrell's union activity began). According to Castagna, on November 6, Sherrill-Harrell made certain complaints to him about the two supervisors. He investigated and concluded that Sherrill-Harrell had actually been at fault. However, neither supervisor had written an incident report regarding these matters or recommended that any action, disciplinary or otherwise, be taken against her. When interviewed about the matter by Castagna, both supervisors indicated they were unconcerned about it. Notwithstanding the absence of an appropriate incident report, which is routine in taking disciplinary action against an employee, and the indifferent response expressed by each supervisor regarding the incident, Castagna decided that these incidents warranted a disciplinary memo. The last incident referred to in the November 7 memo involved a leave request submitted by Sherrill-Harrell, wherein she brought it to Castagna instead of submitting it through channels. Castasna testified that Sherrill-Harrell wanted the request signed and felt that Castagna had ''snatched'' it from her hand, so she attempted to call RMC's home office to

[20] See *Hall of Mississippi, Inc*., 249 NLRB 775, 780 (1980);

[21] *Wright Line*, 251 NLRB 1083 (1980).

complain. This attempt was called to Castagna's attention, so he decided to include it in his report.

I find that none of the incidents related above would support Respondent's decision to terminate Sherrill-Harrell on January 24, and the November 7 warning raises questions in my mind about whether the Respondent was looking for reasons for firing her even at that early date. Additionally, it must be considered that Respondent considered Sherrill-Harrell to be an exemplary employee. In conclusion, I find that Sherrill-Harrell was discharged unlawfully in violation of Section 8(a)(3) of the Act for engaging in protected activity and would not have been discharged were it not for her engaging in such activity. Similarly, I find that Respondent's directions to cease engaging in union activities and urging her to resign for engaging in union activities are unfair labor practices in violation of Section 8(a)(1) of the Act.[22]

D. *Alleged Violations of Section 8(a)(1)*

There are a substantial number of alleged violations of Section 8(a)(1) in the consolidated complaint and I hereinafter have found many of the allegations to be fact. Although the consolidated complaint does not seek a *Gissel*[23] bargaining order in this proceeding, I believe the violations found to have been committed by Respondent would have made it difficult for the Union to have had a fair election at any time much beyond the December 7, 1989 card check, when it had the demonstrable support of a majority of Respondent's involved employees. Thus to the extent that reliance to its detriment by the Union on Respondent's agreement to attend a card check for the purpose of recognition may be an issue, I believe that such detrimental reliance has been demonstrated by the unfair labor practices found below.

The alleged 8(a)(1) violations are discussed in the order in which they appear at the beginning of this decision and appropriate references to the consolidated complaint allegations are set forth with respect to each allegation discussed.

1. Did Respondent, acting through its Assistant Project Manager Jerome Simmons, violate the Act in or about January or February 1990, by threatening employees with the loss of their jobs if the employees continued to support the Union? (CCA 4.)

RMC firewatch Leonard Keith is active in the union campaign and is a steward. In February 1990,[24] on his way to begin his shift, he had a conversation with Assistant Project Manager Jerome Simmons. After talking about a number of things, Simmons looked at Keith's union steward badge and said, ''You going to be in trouble.'' Keith asked him what he meant by that. Simmons replied, ''Captain Clark [the Naval Yard Commander] going to kick us off the ship.'' Keith asked, ''Why,'' and Simmons said, ''Because of the union activity.'' Keith said, ''You know, Jerome, we have a union,'' to which Simmons replied, ''No, Keith, we do not have a union.'' Keith again said he had heard that RMC did have a union. Simmons then told him that the Conpany did not recognize the Union, and shortly thereafter the conversation ended.

APM Simmons testified that the conversation was the result of the Navy's Captain Pickering complaining about RMC's employees' performance. He stated that he told Keith that everyone was going to have to comply with new procedures. Keith asked whether it was because of the union activity. Simmons replied, ''No, it's a result of what Captain Pickering told me.'' He testified that Keith then asked him why RMC would not recognize the Union. He told Keith, that RMC did not believe the Union was beneficial to the employees, and that RMC was in a position to provide anything the employees needed.

Project Manager Frank Castagna testified that there was a period from mid-February though March where Naval officials were complaining about the performance of RMC employees and supervisors. The complaints involved firewatchers leaving the jobsite early, firewatchers mustering in large groups early, and firewatchers were not performing drag and bag properly. ''Drag and bag'' is a clean up operation for which firewatchers are responsible. PM Castagna then had his supervisors increase the number of quality assurance rounds they conducted. This means that the supervisors go to each individual job location to ensure that assigned employees are on site and doing their job. He also changed the routine for prelunch musters,[25] prohibiting returning to the muster area prior to 15 minutes before the lunchtime disembarkment. He also changed the procedures for drag and bag to improve productivity.

Captain John Pickering, repair officer for the Philadelphia Naval Shipyard testified that in late February, he observed a large group of RMC firewatch employees on the flight deck of the *Kitty Hawk* not doing anything productive. He went to management and complained that when RMC employees were not performing their firewatch duties, they were to drag and bag. He stated that though this was the peak of his disatisfaction with RMC's performance he had had similar complaints since he assumed his duties about a year before.

I credit Keith's version of this matter. He testified credibly that Simmons said Captain Clark, not Captain Pickering. In his testimony in this proceeding, RMC's CEO Joe Garcia expressed concerns similar to those Keith testified Simmons expressed to him. These same concerns had been expressed to all supervisors by Garcia prior to the incident between Keith and Simmons. I find that the statements of APM Simmons to be in violation of Section 8(a)(1) of the Act as they tie the potential loss of jobs to union activity.

2. Did Respondent, acting through its Supervisor John Finklea, violate the Act by threatening employees with layoff or termination if the employees continued to engage in union activity? (CCA 5.)

Firewatch Leonard Keith testified that at a March 1990 muster of employees on his shift, Supervisor John Finklea told the gathered employees that he was tired of the dissension among the employees and he would not tolerate it anymore. He said that if the employees had any problems to come to him, commenting he would not let anybody take away his livelihood. He further said, ''I don't know where this dissension comes from. It may have been the union or

[22] See *Montgomery Ward & Co*., 253 NLRB 196, 206 (1980); *Fluid Packaging Co*., 247 NLRB 1467, 1469 (1980); and *L. A. Baker Electric*, 265 NLRB 1579, 1580 (1983).

[23] *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969).

[24] All dates in this section discussing alleged 8(a)(1) violation are in 1990 unless otherwise noted.

[25] A muster is a gathering of employees before starting work, at lunch and before leaving where they are given work and other instructions as a group.

whatever it is, I would like to let your know there ain't no union and RMC does not recognize a union.'' Keith said, ''Correction John, we do have a union.'' Supervisor Finklea replied, ''Why don't you all have a union contract, why don't you pay union dues?'' Keith replied, ''Because we don't have a union contract.''

Supervisor Finklea testified with respect to this meeting that it was Keith who mentioned the Union. He then replied that ''I can understand that you want a union. That's your right. But you have a job to do. I have a job to do. This is my livelihood and I'm going to do my job and you should feel the same way.'' He denied mentioning union dues. Finklea testified that by ''dissension,'' he meant that the people in his section had a negative attitude. Specifically, he stated he was getting a lot of flack from Larry Carr, who had just been made a steward. He testified that Carr was sort of a rebellious person anyway, but when he became steward, he just became very negative. This was some of the dissension that he was worried about.

I credit Keith's version of this conversation. He appeared to be a credible witness and I believe that Supervisor Finklea was indeed referring to the union activity when he spoke of dissension among employees. I find that his statement that he would not tolerate such dissension coupled with his warning that no one was going to take his livelihood away constitutes a threat of implied termination or other discipline for engaging in activity in support of the Union. It was clearly a coercive statement and thus in violation of the Act.

3. Did Respondent, acting through its Supervisor Keith Saunders, engage in conduct in violation of Section 8(a)(1) of the Act by interrogating an employee concerning the employee's union sympathies and threatening an employee with unspecified reprisals if the employee engaged in union activity, threatening to discharge employees because of their activities on behalf of the Union and threatening to terminate employees who were active on behalf of, or supported, the Union?

Firewatch Leonard Keith testified that in April 1990, he asked Supervisor Saunders about a rumor that a fellow firewatch had been terminated. Supervisor Saunders indicated that he thought the rumor was true and jokingly commented, ''A whole lot of yellow badges [probationary employees] and union people will be going, one by one.'' In another conversation with Saunders in the same month, Saunders again jokingly said, ''Keith, a lot of us is going and you may be the next.'' Keith jokingly replied, ''A whole lot of people may be going with me.''

Supervisor Saunders did not deny making these statements. Though made in an apparent joking context, I find that they are coercive and violative of the Act. The statements were made from a supervisor to a union steward, and though Saunders made them in a joking way, must be considered to be the product of management attitude. Thus, they must be considered as serious as they threaten termination for union activity, a real possibility in light of the termination of union activist Sherrill-Harrell in January 1990. (CCAs 6(b) & (c).)

Firewatch and Union Steward Daniel Stephens testified that in the middle of March he ceased wearing his union steward insignia in anticipation of leaving his employment with RMC and becoming a policeman. This prompted Supervisor Saunders to comment on its absence and Stephens informed him of his plans to become a policeman. Supervisor Saunders congratulated him and said he was glad that Stephens did not have anything else to do with the Union.

Supervisor Saunders version of this incident is that he noticed that Stephens was not wearing his steward badge and he asked, ''Dan, you don't have on your button.'' Stephens said, ''Yeah, I'm trying to get another job.'' Saunders then said, ''Well, I'm glad to hear that.'' He denied telling Stephens that he was glad that he had nothing to do with the Union anymore.

I cannot find that this exchange constitutes a violation of the Act. Although I agree with the General Counsel that under most circumstances it would be unusual for a supervisor to be glad an employee was leaving, leaving to become a policeman seems to be an exception. Listening to this testimony, I did not feel that Saunders comments were either given or taken as evidencing his displeasure with Stephens association with the Union. (CCA 16(a).)

4. Did Respondent, acting through its Supervisor Shelton Hargrove, violate the Act by threatening employees with loss of their jobs or layoff because of their union activities?

Firewatch and Union Steward Darryl Shaw testified that he overheard a conversation between Supervisors Hargrove and Leroy Lane and two other employees in March 1990. He was walking behind the others and heard Hargrove say that there were going to be layoffs in April because of the Union. Supervisor Hargrove denied making such a statement. Although the involved statement would be a clear violation of the Act if directed to employees, I do not find a violation here because it was not proven that Supervisor Hargrove's comment was so directed. Shaw could not identify the other employees to whom the statement was supposedly made and it is not certain that the remark was directed to them or to the other supervisors. It could not be shown that the employees heard the remark. They were not directed to Shaw and apparently Supervisor Hargrove was unaware of Shaw's presence. (CCA 7(a).) Former RMC employee Armand Miles was a firewatch and union steward in March 1990. At that time he was engaged in a conversation about the Union with some fellow employees when Supervisor Hargrove intervened. The conversation became heated and Hargrove told the employees that if they lost their jobs, and RMC lost its contract, it would be because of the Union. Supervisor Hargrove denied making such a statement and he denied having an argument with Miles, though he admitted having discussions with Miles about girls. Having heard both witnesses, I consider Miles the more candid of the two and credit his version of this incident. Consequently, I find his remarks amount to a threat that union activity could cost the employees their jobs and is clearly coercive in violation of Section 8(a)(1) of the Act. (CCA 7(b).)

5. Did Respondent, acting through its Assistant Project Manager Donald Singleton, violate the Act by threatening an employee with discipline, threatening an employee with loss of transportation, threatening employees with loss of jobs, threatening an employee with discharge, threatening an employee with physical harm, and threatening employees with layoff, all because of their union activity; and interrogating employees about their union activity?

As will be seen below, then APM, now Supervisor Singleton allegedly engaged in a number of confrontations with employees wherein he made statements which are clear violations of the Act. Though the sheer number of such allega-

tions would tend to indicate that Singleton did make at least some of the statements attributed to him, I credit the testimony of the employees witnesses over his outright denials primarily because witness William Stubbs in my opinion was certainly telling the truth and yet Singleton chose simply to deny the incidents rather than explain them. Moreover, there is a common thread to virtually all of the incidents, Singleton became or was angry and made a rash statement. None of the witnesses testifying about Singleton's actions appeared anything less than credible and I accept their testimony with respect to Singleton as fact.

RMC firewatch and Union Steward William Stubbs testified that in February 1990 he engaged in a conversation with Singleton about one of the newsletters distributed by the Union to its supporters. The particular newsletter had identified Stubbs as a steward and Singleton commented that he and Stubbs had been friends for a long time, but since he knew that Stubbs was a steward, ''he was going to find a way to fire my black ass.'' Singleton laughed and walked away.

Supervisor Singleton denied making this statement because ''[he] rather likes Stubbs.''

A few days later, the two men had another conversation prompted by another union newsletter which had poked fun at several supervisors including Singleton. Singleton commented that he was the fairest supervisor of all and the employees would not want to get him mad, or he would take his pencil and use it as a domino effect on the stewards. Singleton appeared upset in this conversation. Singleton denied this conversation.

Former firewatch and Union Steward Gerald Landers testified that he overheard these conversations between Stubbs and APM Singleton. He testified that they startled him.

As noted above, witness Stubbs appeared to be an entirely credible witness and I do not credit Singleton's denial. His denial of this testimony also casts serious doubt on the remainder of his testimony, including his denials of alleged actions. I find both of the statements made to Stubbs to be coercive threats and constitute violations of Section 8(a)(1) of the Act. (CCAs 8(d) and (1).)

Former firewatch and Union Steward Harry McGrath testified that on December 22, 1989, Singleton came up to him and said, ''McGrath, I didn't know that you were a steward and there is going to be a big crackdown after the holidays.'' In early February 1990, he had another conversation with Singleton wherein Singleton said, ''If you's don't stop the union activity we are all going to be out of a job.'' Singleton denied ever making any such statement to McGrath. Although Respondent will argue that Singleton does not use the term ''you's'' in his speech and McGrath said he did, I still credit McGrath's testimony over that of Singleton as I do not find Singleton to be a credible witness and McGrath did appear to be credible. (CCAs 8(a) & (c).)

McGrath also recalled that in late January or early February, he had a conversation with Supervisor McDuffie and Singleton about the need for respirators on the job. During the course of this conversation, Singleton asked if McGrath got his information from the Union and McGrath said, ''No.'' Singleton then said, ''You know, I could write all of you shop stewards up and have you all fired and my write ups will stick.'' Singleton acknowledged this conversation in general, but denied the threats alleged to have been made by him.

I credit McGrath's testimony over that of Singleton and thus find that Singleton threatened an increase in disciplinary activity because of Union activity, loss of jobs in general because of union activity and loss of jobs by union stewards in particular because of their union activity, all in violation of Section 8(a)(1) of the Act. (CCA 8(k).)

Former firewatch and Union Steward Denise Carey testified that prior to February, it had been company practice to pick up supervisors and employees at the shipyard gate and give them a ride in the company van to the ship on which they were working. She testified that in early February, Singleton said to her, ''What is wrong with your damn stewards.'' She asked what he meant and Singleton said that a couple of stewards had told employees who were riding in the van not to do so. He then said he was sick of the stewards and that he was going to see to it that the van was not used to pick up employees and the employees had ''damn well better be on time.''

APM Singleton denied saying that the van would not pick up employees any more. He denied telling Price, another witness in this proceeding, that the employees had better be on time, though he may have meant to direct the denial to Carey's testimony. He did admit that there had been an incident within the involved timeframe where some union stewards had criticized other employees for accepting rides with supervisors in the company van. I credit the testimony of Carey over that of Singleton, and find this was another of his angry responses to union activity. Although RMC never stopped giving employees rides in the van, Singleton's threat was coercive as was his threat that employees had better be on time (or face unspecified reprisals), and thus in violation of Section 8(a)(1) of the Act. (CCA 8(e).)

Firewatch and Union Steward Anthony Price testified that on Saturdays during the winter of 1990, it was the Company's practice to let an employee use a company vehicle to get luncheg for fellow employees at a McDonald's located on the shipyard. On one Saturday in January, Price went to the company office and asked Singleton if could use the vehicle to make such a chow run. Singleton denied the request telling Price to get the Union to drive him.

Supervisor Singleton testified that the APMs resolved to stop the practice because the firewatches were getting back too late or were taking food on board ship. He denied making the comment about the Union. PM Castagna made the decision about stopping the lunch rides to McDonald's. He did this because personnel were leaving for lunch early, getting back late and ''trashing'' his van.

I credit Price's testimony over that of Singleton in that I find that Singleton told Price to get the Union to drive him, implying that the use of the van was being withdrawn because of the Union. I find the remark coercive and in violation of the Act. However, I find that the use of the van was actually stopped by Castagna for reasons unrelated to union activity and ceasing the practice was not a violation. (CCA 8(b).)

Firewatch Price testified that the union supporters engaged in marches in mid-March 1990 and after one such march, he was approached by Singleton who asked where he was in the march because ''they looked for me to run me over.'' Singleton denied making such a statement. I find this statement

to be out of character for Singleton to make, and if made, consider it to be an attempt to be humorous. Almost all the unlawful remarks attributed to Singleton were his angry response to something having to do with the Union. Here he was not responding to anything and having observed Singleton's demeanor, I do not believe he would threaten bodily harm to an employee for engaging in union activity. (CCA 8(h).)

Firewatch Price testified that in March there were rumors circulating among the employees concerning possible layoffs. During this time, he testified that Singleton was speaking to a small group of employees and told them that there was going to be a layoff beginning April 15 and that they could thank the Union for the layoff. Singleton denied making such a statement. Having carefully considered the testimony of Price and Singleton with regard to this alleged statement, I credit the testimony of Price. Singleton's testimony about his conversations with Price were equivocal and exhibited less than candor in my opinion. I find that Respondent, through Singleton, violated Section 8(a)(1) by tieing a possible layoff to union activity. There is also an allegation that Singleton interrogated Price. This involved an inquiry by Singleton if Price were still a steward on a day when he did not wear his steward button. I do not find this to be coercive interrogation and a violation of the Act. (CCA 8(i).)

Former firewatch John Cherry testified that he overheard a conversation between PM Singleton and another supervisor. This conversation was not directed at any employee and as APM Singleton was unaware it was being overheard, I do not consider it to be a violation of the Act.

Former firewatch Charles Miller testified that in late February or early March 1990, he overheard APM Singleton comment to a group of firewatchers that ''if you all keep worrying about the damn union you are all going to be the hell out of here.'' I have carefully considered this testimony and believe this incident to be the one testified about by Price wherein Singleton tied the possible layoff to union activity.

6. Did Respondent engage in conduct in violation of Section 8(a)(1) of the Act by since about March 1990, prohibiting employees from wearing union symbols on their hardhats?

In March 1990, union supporters began wearing stick-on orange paper dots (about an inch and a quarter in diameter) to protest the refusal of RMC to recognize the Union and the terminations of Sherrill-Harrell and Harry McGrath. RMC immediately prohibited the wearing of these dots on hardhats and glasses as violations of a longstanding company policy based on Naval Regulations in force at the Philadelphia Naval Shipyard. Employees were allowed to wear the dots on their clothing and did so.

Department of the Navy Philadelphia Naval Shipyard instruction 10470.3(g), code 300, dated March 20, 1989, states, inter alia:

> (3) Employees do not make any alterations on protective helmets such as cutting brims, making holes, applying unauthorized decals/labels, graffiti, altering or erasing authorized data. Disregard of these instructions by employees will be considered grounds for disciplinary action in accordance with reference (a) Exceptions are made for decals for supervisory organizations and officials of Unions representins the Navy's civilian workers.

RMC was subject to this regulation. RMC has enforced this regulation and its predecessors since 1985, uniformly prohibiting anything to be placed on hardhats, glasses, and identification badges not allowed by the regulations.

Lloyd Darby, operational safety and health program manager for SLEP and lead safety specialist for the Naval Shipyard testified that in late 1989 he told Frank Castagna that unauthorized decals, etc., on hardhats would not be legal. He also believed that decals on safety glasses would violate safety regulations. He admitted that his office has not enforced these regulations with respect to other employees at the shipyard.

Lorraine Daliessio, an employee of the Navy and a union steward for Local 19 of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, testified that most workers at the Philadelphia Naval Shipyard, other than RMC's employees, wear all sorts of decals and other insignia on their hardhats. These decals, etc., range from union insignia to cartoons, and radio advertisements. No employee has been disciplined for this practice.

The employees have a Section 7 right to display union insignia. Respondent has not denied them that right, except with respect to items that Naval regulations mandate may not be covered with such insignia. The Respondent has uniformly enforced these regulations through its own rules for years predating the union campaign. The rules are founded in safety considerations and do not appear arbitrary. The fact that the Navy does not actively enforce the regulations against its own employees does not seem to give an independent civilian subcontractor the right to ignore them and it has not. I believe the purpose behind Section 7 of the Act is adequately served by Respondent's practice of allowing the dots and all sorts of other union insignia to be worn on employees' clothing, and find no useful purpose would be served by attempting to rescind the Navy's regulations herein. I find that Respondent did not violate Section 8(a)(1) of the Act by prohibiting the wearing of union dots and other insignia on hardhats, glasses, and identification badges.

7. Did Respondent, acting through its Supervisor Carl Shelman, engage in conduct in violation of Section 8(a)(1) of the Act, by threatening employees with termination if they supported the Union and interrogating employees about their union sympathies?

Firewatch and Union Steward Anthony Price testified that in late February, he was at a muster speaking to two new RMC employees about the Union. Supervisor Shelman approached and called the new employees aside, saying they had to have the job before they could sign a union card. They were probationary employees.

Supervisor Shelman denied making this statement. He testified that when new people came on he gave them an indoctrination wherein, because the Union was trying to organize, he told that they would hear both sides of the story, take what they heard with a grain of salt and make a decision on what they wanted to do. He told them that Pennsylvania is a closed shop state and that if the Union was voted in, then they would have to join the Union to keep their jobs. He also told them that the Company was against the Union, that it had an existing contract that could not be changed, and that

the Company could not negotiate different terms. He gave quite a few of these indoctrinations in early 1990.

I do not find Shelman's denial credible based on the entirety of his testimony and credit Price's testimony. Accordingly, I find that Shelman intimated to the new employees that union membership is incompatible with continued employment and was thus coercive and in violation of Section 8(a)(1) of the Act. I also find Shelman's own description of his indoctrination of employees to be an independent violation of the Act, though not specified in the complaint. Shelman's activity, in my mind, is significant in that it immediately puts new employees on notice that support of the Union is not desirable from the Company's point of view and is useless from a practical point of view. Given the high turnover in employees experienced by RMC, this sort of ''indoctrination'' could easily erode the Union's initial support, further pointing up the importance of the Union's reliance on the December 7 card check as being determinative of its status vis-a-vis recognition. (CCA 10(a).)

Firewatch and Union Steward Michael Winters testified that in April, he had a conversation with Shelman wherein Shelman said he had heard that Winters was crying about the transfer. He then stated to Winters that ''of all people I didn't expect you to be supporting the union.'' Winters was wearing his union button at the time, and did not reply. Shelman did not ask why Winters was supporting the Union and I cannot find this amounts to unlawful interrogation. (CCA 10(b).)

8. Did Respondent, acting through its Supervisor Christopher Brunson, engage in conduct in violation of Section 8(a)(1) of the Act by informing employees that the Respondent would not allow union stewards to attend employee disciplinary meetings, and threatening to discharge union stewards who attempted to attend employee disciplinary meetings, threatening to terminate employees if the employees continued to engage in union activity, and telling employees that the Respondent was going to lay off employees because of their union activities?

Firewatch and Union Steward James Weeks testified that in March 1990, he had a conversation with Supervisor Brunson about layoffs. Brunson spoke to the firewatch employees in his section and said that some of the supervisors, including himself, were going to be laid off. He stated that for the next 3 weeks it was going to be very hard for the firewatchers and in the next several months about 120 would be laid off, so the firewatchers should be careful. He further said that since the Union had set in, an anticipated extension of RMC's contract would not occur. He stated that the Union activities had messed things up on the contract. This testimony was not denied and I credit it, finding that Respondent, through Supervisor Brunson, violated the Act by tieing the Union's activities with the anticipated layoffs and loss of contract extension. (CCA 11(c).)

Firewatch Nathaniel Moore testified that in February 1990, he had a conversation with Supervisor Brunson and several fellow firewatchers. The firewatchers were talking about the Union and how well things were coming along with the Union when Brunson said, ''That if we don't stop demonstrating and talking about the union that Frank [Castasna] is going to fire all of us.'' The employees just laughed off this warning. This conversation was overheard by firewatch and Union Steward Darryl Shaw. This testimony was not denied and I credit it, finding Respondent, through Supervisor Brunson, violated the Act by threatening employees with discharge for engaging in union activity. (CCA 11(b).)

Former RMC firewatch and Union Steward Denise Carey testified that in late January 1990, Supervisor Brunson read her a RMC memo stating that any union steward who accompanied any employee to the company office for any grievance would be terminated. The memo stated that RMC did not recognize the Union and therefore did not recognize any shop stewards. She testified that Supervisor Brunson used the term, ''north on Broad'' to indicate termination.

PM Frank Castagna denied that there had ever been such a memorandum issued by RMC. He said the company policy was to allow a person with a grievance to be accompanied by another employee. On cross-examination, Castagna differentiated between a grievance and discipline, agreeing that an employee did not have the right to have a witness accompany him or her to a disciplinary proceeding. I credit Carey's testimony about what Supervisor Brunson said to employees as it accurately mirrors the Respondent's general policies. Regardless whether a memo actually ever was issued does not detract from Supervisor Brunson's claim that it had. I have heretofore found that Respondent was obligated to recognize and bargain with the Union as of December 7, 1989. This obligation includes the requirement that stewards be permitted to attend investigatory interviews that could lead to discipline. Threatening to terminate employees for engaging in such protected activity violates Section 8(a)(1) of the Act. (CCA 11(a).)

9. Did Respondent, acting through its vice president, Richard Garcia, engage in conduct in violation of Section 8(a)(1) of the Act by on or about March 5, 1990, telling employees that Respondent would never sign a contract with the Union, and further, threatening employees with the loss of their jobs if the employees continued to seek union representation?

Former firewatch and Union Steward Denise Carey testified that on March 5, 1990, employees were told that Richard Garcia would be visiting the ship on which they were working. They were also told that he would speak with employees who had something to say to him. Later in the day, Garcia in the company of Frank Castagna and Supervisor Sheldon Hargrove came to her work station. She asked Garcia why RMC did not think the Union was in the employees best interest. Garcia told her that a firewatch was just a temporary job and because of the high turnover rate, the Company did not think the Union would be in the employees' best interest. He mentioned the initiation fee that would have to be paid and the fact that wages were fixed by the Navy. She asked what incentives the employees could look forward to and was told by Garcia that no one intends to make firewatching a permanent job. He said that firewatching was just a foot in the door and the uproar that the employees were causing by pressuring the Company to negotiate a contract was upsetting the Navy, and that if the employees did not stop, they would all be ''north on Broad.''

Firewatch and Union Steward Terrence Brown also had a conversation with Garcia on March 5. They talked about a number of issues, including the problems Brown felt employees were having on the job with writeups, harassment, and some of the contract issues. As of the date of this conversation, the Union had filed charges about recognition and Sherrill-Harrell. Garcia said that when the NLRB comes out

with a ruling for or against RMC, that it would comply. This statement made Brown happy and he began talking about a union contract. Garcia broke in and said that RMC will never have a union contract.

Former firewatch and Union Steward Harry McGrath also met with Garcia in early March, and had a conversation with him that was essentially similar to the one between Garcia and Brown.

Garcia generally agreed with the testimony set out above about his conversations with the involved employees, except he denies saying that RMC will never have a union contract and denied saying that the union activity will cause everyone to go ''north of Broad.'' I credit the employees' versions of the above described incidents. I have heretofore found Garcia to be less than a credible witness and the statements that he made to the involved employees are consistent with the Company's position as expressed by CEO Joe Garcia. I find that a threat that the Company will lose its contract and employees will be terminated, as well as the statement that there will never be a negotiated contract as very coercive and in violation of Section 8(a)(1) of the Act. (CCA 12.)

10. Did Respondent, acting through its Supervisor Spencer Gibbs, engage in conduct in violation of Section 8(a)(1) of the Act, in or about January 1990, by threatening to impose more onerous working conditions on employees if the employees selected the Union as their collective-bargaining representative?

Firewatch and Union Steward Terrence Brown testified that in mid-January 1990, Supervisor Gibbs came to his work station and began asking him questions about the Union. He asked whether Brown considered himself a steward as the Company did not recognize the Union. He then told Brown that he had been a steward at another company and that it was difficult to try to defend someone as a steward when you know they are wrong. Among other things said in this conversation by Gibbs was that under a union contract nobody would get a break anymore. The Company's responsibility would be to administer the contract that was negotiated to the letter of the contract. So there would be no slack on discipline and that if someone disobeyed something that it was going to be a writeup. Supervisor Gibbs testified that in this conversation he was relating the way things had been done at a previous employer. I find this conversation to constitute a threat that if the Union came in, discipline would become stricter. This is obviously coercive and in violation of Section 8(a)(1) of the Act. (CCA 13.)

11. Did Respondent, acting through its Assistant Project Managers Louis Harvey and Donald Singleton, violate Section 8(a)(1) of the Act by interrogating an employee on March 5, 1990, concerning the employee's union sympathies and activities?

Firewatch and Union Steward Terrence Brown testified that on March 5, 1990, he and fellow firewatch Harry McGrath were on the way to the water fountain when they encountered Assistant Project Managers Louis Harvey and Donald Singleton. Singleton was upset about an union newsletter article involving Singleton and Brown. Singleton was angry about the article and said that the Company was definitely against the Union. He asked Brown why he supported the Union and what good did he feel that the Union would do Singleton said that he would never support the Union and that the Union was wrong and was not in the employees' best interest. Harvey asked Brown what could the Union do for him that the Company could not do. Though Singleton denied ever threatening Brown, he did not deny this interrogation. Harvey did not testify. I find this interrogation, especially in the context of APM Singleton exhibiting anger over a report in the union newsletter, to be coercive and in violation of the Act. (CCA 14.)

12. Did Respondent, acting through its Supervisor William McDuffie, engage in conduct in violation of Section 8(a)(1) of the Act, by threatening to discharge an employee because of the employee's union activity and by threatening employees with loss of their jobs if they continued to engage in union activities?

Former firewatch and Union Steward Harry McGrath testified that in late October or early November 1989, shortly after becoming a steward, Supervisor McDuffie approached him and warned that if he ever caught McGrath engaging in union activity aboard ship, he would have him fired on the spot. On cross-examination, McGrath said the warning was given in a joking manner.

Supervisor McDuffie testified that he told McGrath that if he had any union activity to do it before he came on the shift or during lunch or break. He told him that he did not care what he said to people about the Union as long as it did not interfere with his work or the employees' work. He denied telling him that he would fire him if he was involved in union activities.

In early February, Supervisor McDuffie told McGrath that if the employees did not stop the union activity they would all be out of a job and asked where RMC was going to get the money to pay for a union contract. Supervisor McDuffie testified that McGrath told him that the union people were harassing the Navy officials by marching around the naval shipyard offices. McDuffie told him that the Navy was going to get tired of it and that the Navy saw RMC employees, not union representatives, marching around its offices. He denied the ''we will all be out of a job'' comment.

I credit McGrath's version of these incidents. In the first one, management had yet to prepare and disseminate its supervisors list of do's and don'ts and I find it unlikely that McDuffie was sufficiently informed on labor law to give such a pat instruction to McGrath. I find the statement coercive even if given in a joking manner. What is McGrath to do when he approaches another employee on break to seek his or her support for the Union, decide whether Supervisor McDuffie was indeed joking or risk losing his job? This is not a decision McGrath should have to make. In the second incident, McDuffie's own version implies retaliation by the Navy for the union activity with the obvious result that RMC will be out of a contract with the attendant loss of employees' jobs. Crediting as I do McGrath's testimony, I find Respondent violated Section 8(a)(1) of the Act by threatening McGrath with termination for engaging in union activity and by threatening the loss of employees' jobs if they continue to engage in union activity. (CCAs 15(a) & (b).)

13. Did Respondent, acting through its Assistant Project Manager Joseph Brown, engage in conduct in violation of Section 8(a)(1) of the Act by on numerous occasions interrogating an employee concerning the union sympathies and activities of the Respondent's employees and by interrogating an employee concerning the employee's union sympathies?

Former firewatch Larry Hightower testified that in late October and early November 1989, he frequently rode a shuttle bus between the subway and ship on which he was working. APM Brown on occasion rode with him and would ask Hightower about the mood of the people with respect to the Union and whether any union literature was being passed around. He also asked if Hightower was active or planned on becoming active in the Union.

APM Brown denied Hightower's allegations. APM Brown was asked what his current hours of work were although the only material time when this would have been important was for the period of October and November 1989. He did not deny riding on the shuttle bus with Hightower. I credit Hightower's testimony. Brown's activity occurred at a time when Richard Garcia testified that RMC was engaged in an active campaign to learn everything it could about the Union and the union activity among its employees. Brown's interrogations were entirely consistent with the Company's aims. It must also be noted that the Company had never been engaged in a union campaign before and that in the involved timeframe, its officials were not particularly sophisticated about what they could and could not lawfully do. On the other hand, I do not find these interrogations to be coercive. Hightower's testimony would lead one to believe that they were fairly passive and coupled with no hint of a threat. Under these circumstances, I do not find the interrogations unlawful.

14. Did Respondent, acting through its Supervisor Thomas Scott, engage in conduct in violation of Section 8(a)(1) of the act, by in or about mid-February 1990, threatening an employee with unspecified reprisals in order to discourage the employee from engaging in union activity?

Former firewatch Larry Hightower testified that he and fellow firewatch Louis Gilbert were working when Supervisor Scott approached and verified that they were in the right location. Supervisor Scott then told them that they were on RMC's hit list. Gilbert was a union steward and wore a steward's insignia. Scott did not testify and explain his statement. In the context of the numerous threats being made to employees at this time because of union activity, I can only draw the inference that the statement was made in that context. If Supervisor Scott was displeased with these employees' work performance, RMC could have presented some evidence to reflect that. In its absence, I find that Scott threatened Hightower and Gilbert with possible termination for engaging in union activity and thus violated Section 8(a)(1) of the Act. (CCA 17.)

15. Did Respondent, acting through its Supervisor Clarence Johnson, engage in conduct in violation of Section 8(a)(1) of the Act, by in or around February 1990, interrogating an employee concerning the employee's union activities and sympathies?

Union Steward Darryl Shaw testified that in February, his supervisor, Clarence Johnson, walked past him and asked if Shaw were a union steward. Shaw said yes, and Johnson continued on his way. Shaw wore a steward's insignia. I do not find this to be an interrogation nor do I find it coercive. I find no violation of the Act by Johnson's comment, even if made. Johnson denied asking the question. (CCA 18.)

CONCLUSIONS OF LAW

1. Respondent, Research Management Corp. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The employees of Respondent in the unit described below constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> Included: All non-supervisory, non-clerical employees employed by the Regpondent at the Philadelphia Naval Shipyard.
>
> Excluded: All guards and supervisors as defined in the Act.

4. By virtue of demonstrating that it had signed cards authorizing it to be their exclusive collective-bargaining representative from a majority of the Respondent's employees in the aforesaid unit, and by virtue of Respondent's agreement to recognize the Union as the exclusive collective-bargaining representative of said employees on establishing majority status, at all times since December 7, 1989, the Union has been and is currently the exclusive bargaining representative of the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. Since on or about December 7, 1989, the Respondent has failed and refused to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the unit herein found appropriate, and by virtue of its actions, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

6. By discriminatorily discharging its employee, Ernestine Sherrill-Harrell on January 24, 1990, for engaging in activity protected by Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

7. Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act by:

(a) Assistant Project Manager Joseph Brown telling an employee to stop speaking to other employees about the Union and urging the employee to resign because of her activities in support of the Union.

(b) Vice President Richard Garcia telling employees that Respondent would never sign a contract with the Union and threatening employees with the loss of their jobs if they continued to seek union representation.

(c) Assistant Project Managers Louis Harvey and Donald Singleton interrogating an employee about the employee's union sympathies and activities.

(d) Assistant Project Manager Jerome Simmons threatening employees with the loss of their jobs if the employees continued to support the Union.

(e) Assistant Project Manager Donald Singleton threatening an employee with discipline, threatening employees with loss of transportation, threatening enployees with loss of jobs, threatening an employee with discharge, and threatening employees with layoff, all because of their union activity.

(f) Supervisor Christopher Brunson informing employees that the Respondent would not allow union stewards to attend employee disciplinary meetings, and threatening to discharge union stewards who attempted to attend employee disciplinary meetings, threatening to terminate employees if the employees continued to engage in union activity, and telling employees that the Respondent was going to lay off employees because of their union activities.

(g) Supervisor John Finklea threatening employees with layoff or termination if the employees continued to engage in union activity.

(h) Supervisor Spencer Gibbs threatening to impose more onerous working conditions on employees if the employees selected the Union as their collective-bargaining representative.

(i) Supervisor Shelton Hargrove threatening employees with the loss of their jobs because of their union activities.

(j) Supervisor William McDuffie threatening to discharge an employee because of the employee's union activity and by threatening employees with loss of their jobs if they continued to engage in union activities.

(k) Supervisor Keith Saunders interrogating an employee concerning the employee's union sympathies and threatening an employee with unspecified reprisals if the employee engaged in union activity, threatening to discharge employees because of their activities on behalf of the Union and (a) threatening to terminate employees who were active on behalf of, or supported, the Union.

(l) Supervisor Thomas Scott threatening an employee with unspecified reprisals in order to discourage the employee from engaging in union activity.

(m) Supervisor Carl Shelman threatening employees with termination if they supported the Union and stating to new employees the futility of supporting the Union because Respondent could not change terms and conditions of employment because of its contract with the Navy.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

9. Respondent did not engage in the other unfair labor practices alleged in the consolidated complaint.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (3), and (5) of the Act, it is recommended that it be ordered to cease and desist therefrom, and take certain affirmative action which is necessary to effectuate the policies of the Act.

As the Respondent has unlawfully refused to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of its employees in the appropriate unit, it is recommended that Respondent be ordered to, on request, extend recognition to the Union and bargain in good faith with respect to wages, hours of work, and any other terms and conditions of employment of such employees.

As the Respondent has unlawfully discharged its employee, Ernestine Sherrill-Harrell, it is recommended that Respondent be ordered to offer Sherrill-Harrell immediate and full reinstatement to her former position, without prejudice to her seniority or rights and privileges previously enjoyed, discharging if necessary any employee hired to replace her. It is also recommended that Respondent make Sherrill-Harrell whole for any loss of earnings or any other benefits she may have suffered as a result of Respondent's unlawful discrimination against her, to be computed in the manner described in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

It is further recommended that Respondent be ordered to remove from its files any reference to the discharge of Sherrill-Harrell and notify her in writing that this has been done and that this matter will not be used against her in any way.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[26]

ORDER

The Respondent, Research Management Corp., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain collectively in good faith with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> Included: A11 non-supervisory, non-clerical employees employed by the Respondent at the Philadelphia Naval Shipyard.
>
> Excluded: All guards and supervisors as defined in the Act.

(b) Discharging its employees because they engage in conduct protected by Section 7 of the Act.

(c) Telling an employee to stop speaking to other employees about the Union and urging the employee to resign because of her activities in support of the Union.

(d) Telling employees that Respondent would never sign a contract with the Union and threatening employees with the loss of their jobs if they continued to seek union representation.

(e) Interrogating an employee about the employee's union sympathies and activities.

(f) Threatening an employee with discipline, threatening employees with loss of transportation, threatening employees with loss of jobs, threatening employees with discharge, and threatening employees with layoff, all because of their union activity.

(g) Informing employees that the Respondent would not allow union stewards to attend employee disciplinary meetings, and threatening to discharge union stewards who attempted to attend employee disciplinary meetings.

(h) Threatening to impose more onerous working conditions on employees if the employees selected the Union as their collective-bargaining representative.

(i) Threatening an employee with unspecified reprisals if the employee engaged in union activity.

[26] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(j) Stating to new employees the futility of supporting the Union because Respondent could not change terms and conditions of employment because of its contract with the Navy.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, extend recognition to the Union and bargain in good faith with respect to wages, hours of work, and any other terms and conditions of employment of its employees in the unit found appropriate herein.

(b) Offer Ernestine Sherrill-Harrell immediate and full reinstatement to her former position, without prejudice to her seniority or rights and privileges previously enjoyed, discharging if necessary any employee hired to replace her; and make Sherrill-Harrell whole for any loss of earnings or any other benefits she may have suffered as a result of Respondent's unlawful discrimination against her, to be computed in the manner set forth in the remedy section of this decision.

(c) Remove from its files any reference to the discharge of Sherrill-Harrell and notify her in writing that this has been done and that this matter will not be used against her in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Philadelphia, Pennsylvania, copies of the attached notice marked ''Appendix.''[27] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[27] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''